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INDIAN TRUST FUND OVERSIGHT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

THE STATUS OF THE INDIAN TRUST FUND

SEPTEMBER 23, 1986
WASHINGTON, DC

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CONTENTS

Statements of: Page

Adamson, Rebecca, president, First National Financial Project 24
Andrews, Hon. Mark, a Senator from North Dakota and chairman of the Select Committee on Indian Affairs 1
Berkowitz, Stephen A., project manager of Price-Waterhouse Study 14
Carmody, Theresa, Fredericksburg, VA 24
Cobell, Elouise, vice chairman, Association of Tribal Finance Officers, Browning, MT 19
Ferm, Paul R., vice president, Citizens & Southern National Bank, Atlanta, GA 11
Goodhope, Samuel, former special assistant to the Assistant Secretary for Indian Affairs 14
Old Person, Earl, chairman, Blackfeet Tribal Council, Browning, MT 19
Parker, Alan, president, American Indian National Bank, Washington, DC 19
Robson, Ernest S., III, principal, Mutinational Business Service, Inc 28
Smokovich, Mike, Financial Management Service, Department of the Treasury 3
Swimmer, Ross, Assistant Secretary for Indian Affairs, Department of the Interior 3
Vale, John, Investment Officer, Bureau of Indian Affairs 3

APPENDIX

Prepared statements of:

Adamson, Rebecca 52
Cobell, Elouise 45
Ferm, Paul R 39
Parker, Alan 49
Robson, Ernest S., III 56
Swimmer, Ross 31

INDIAN TRUST FUND OVERSIGHT

TUESDAY, SEPTEMBER 23, 1986

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:14 a.m., in room 385, Russell Senate Office Building, Hon. Mark Andrews (chairman of the committee) presiding.

Present: Senators Andrews and Murkowski.

Staff present: Peter Taylor, chief counsel; John Vance, staff attorney; Sheila Rogan, professional staff member; Ipo Lung, professional staff member; and Irene Herder, staff secretary.

STATEMENT OF HON. MARK ANDREWS, U.S. SENATOR FROM NORTH DAKOTA, AND CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. My apologies for being late to chair. I was in the chair in the Senate and my replacement did not show up until after the hour he was supposed to.

The oversight hearing today is for the purpose of informing the Congress on the status of the Indian trust fund, transmittal and investment of the money in the fund and the proposed request for proposal issued by the Treasury Department to the fund.

The Indian trust fund is managed by the Secretary of the Interior in his role as trustee, but it belongs to 250,000 individual American Indians and 254 separate Indian tribes. It consists of judgment funds awarded to tribes by the courts, money they earn from oil and gas leases, land individually and privately owned and leased to producers and farmers, timber leases, and money earned from the investment of the money these transactions earn. It is an important and little-known part of the Federal-Indian relationship.

Back in 1983, the Bureau of Indian Affairs hired the Price-Waterhouse accounting firm to analyze the management of the Indian trust fund. This study was prompted by the concerns of those charged with managing the money, as well as the concerns of the tribes and individual Indians about the investment and disbursement of their money.

The study was completed early in 1984 and filled 12 volumes. Fortunately, there is a digest.

Then on April 15, 1985—a date all too familiar to American taxpayers—the Bureau of Indian Affairs sent out a request for information to banks and investment houses, inquiring just what services might be available to assist in managing the trust fund. This request was over 1 year after the completion of the Price-Water-

house study and report. There were 58 responses to the request from various national institutions.

Then in May 1985 the Bureau of Indian Affairs scheduled four meetings around the country so that the financial community and the tribes could meet with the individuals who manage the fund on behalf of the trustees. Meetings were held in New York, Chicago, San Francisco, and Washington, the last on May 31, 1985.

Now, everyone seems to agree that there ought to be some changes in the system. Collection of the money must be speeded up; the disbursing of the Indians' money must be speeded up; and perhaps the trustee may need more flexibility in investing the money. If this is so, it will require legislation. We are well aware of that.

Then on April 22, 1986, the Department of Treasury issued a request for proposal on behalf of the Bureau of Indian Affairs, stating that its purpose was to provide the Bureau of Indian Affairs integrated external services encompassing investment management, custodial services and lockbox facilities, to collect and concentrate, invest, account for, and disburse Indian trust fund moneys. A new day was clearly dawning.

The request for proposal was limited to only six so-called lockbox banks. No other institutions were invited to participate under the request, and that prompted me to inquire about the restriction. Here, hopefully to answer all of these questions, of course, is Mr. Ross Swimmer, the Assistant Secretary for Indian Affairs. He is accompanied by a number of his people.

I would like to point out, Ross, before you begin, I am going to have to absent myself in about 5 minutes because I have a meeting with the Secretary in the majority leader's office, but in the absence of another member of the committee, I will turn over the continuation of the hearings, of course, to our chief of staff because I don't want to hold you up and I do want to get these facts in the record.

But let me ask you one particular question that I hope can be answered in your testimony. In May of this year I wrote Treasury, Jim Baker, Secretary of the Treasury, on May 27, a letter seeking answers to certain questions. Now, I still haven't received an answer to these questions. I am providing both of you with a copy of that letter. I would hope that those questions can be answered promptly, and hopefully can be answered by you in your testimony here today because you are part of that same administration team.

But it seems an inordinately long time to go from May 27 until now, the latter part of September, without an answer to those questions that we asked, because we need to know what the answers are in order to fulfill our commitment to make sure that this issue is decided on a rational, factual basis.

Given that introduction, it is good to have you, Ross. We are looking forward to hearing your statement.

STATEMENT OF HON. ROSS SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JOHN VALE, INVESTMENT OFFICER, BUREAU OF INDIAN AFFAIRS, AND MIKE SMOKOVICH, FINANCIAL MANAGEMENT SERVICE, DEPARTMENT OF THE TREASURY

Mr. SWIMMER. Thank you. I appreciate the opportunity to be here, Mr. Chairman. With me is Mike Smokovich, of the Treasury Department.

The CHAIRMAN. I might ask if you are aware of that inquiry and whether or not Treasury Department.

Mr. SMOKOVICH. It's my understanding that the letter went out. I frankly don't have a copy of the signed letter. There were a number of drafts, in fact. We wanted to make sure we had all our facts right. But, as far as I know, that letter did go out.

The CHAIRMAN. When?

Mr. SMOKOVICH. That I can't tell you specifically.

The CHAIRMAN. Well, we get a lot of complaints about the postal service, but the critical question now is when, because one agency is leaning on another agency, and the reason I asked you for the question is because I assumed that when Jim Baker got the letter they were going to bounce it back and forth to you for drafting.

Now, you say it's been bounced back several times and a letter has gone out, a signed letter has gone out. The critical thing is: when? If it went out a month ago, I guess we can talk to the Postmaster General. If it went out 2 weeks ago, I guess that you almost have to suspect that it's held up some place.

In fact, I think of the 22-cent stamp—although, well, you guys pay first-class postage, too. You don't buy stamps. But a 22-cent stamp, I think, is about 18 cents storage and 4 cents for moving the mail.

But we would be interested in finding out just how that goes.

Mr. SWIMMER. We will see that it gets to you.

Mr. SMOKOVICH. I will see that it gets to Pete Taylor today or tomorrow.

The CHAIRMAN. Wonderful. We can do something hand-carried, you know.

Welcome, Senator Murkowski.

Senator MURKOWSKI. Good morning, Mr. Chairman.

The CHAIRMAN. You can proceed.

Mr. SWIMMER. As the chairman ably pointed out, this process has been going on for several years now. As early as—well, before 1973, actually, the General Accounting Office had done some studies on trust fund investments and management of the Bureau of Indian Affairs and made some recommendations, followed by the Price-Waterhouse report and others.

Also, I chaired a commission called the President's Commission on Indian Reservation Economies, and we ran into this issue. We made a similar recommendation that something needed to be done to ensure that the trust funds of the Bureau of Indian Affairs were properly managed and invested for the greatest return possible to the tribes. We had a little bit of concern about the risk that would be involved and was involved in the types of investments, primarily certificates of deposit, that were being made in banks and savings

and loans which had a history of not being the most stable. Those were the ones that were paying the highest rates.

I would point out, however, that this is an area where the Bureau of Indian Affairs and their trust fund management in Albuquerque, principally through the efforts of one John Vale, did a superb job of doing the work of managing this $1.5 billion and maintaining the safety of it. I would commend his work. I wish I had a dozen more like him.

I would point out, however, that this is an area where the Bureau of Indian Affairs and their trust fund management in Albuquerque, principally through the efforts of one John Vale, did a superb job of doing the work of managing this $1.5 billion and maintaining the safety of it. I would commend his work. I wish I had a dozen more like him.

But in the time that we had to deal with this as an internal issue, the limited investments that we made generally did give us a rate of return that was at or above market for those kinds of investments, for certificates of deposit, and with a reasonable degree of safety because we were required to back up those investments with U.S. securities or pledges in some way.

So the history has been one that, as indicated, there were several ways in which we might enhance the return on funds to tribes, and one where it could get the money in the system faster. One of the ways of doing that is in the collection of the money from the source of payment, whether it was interest income or grazing income or energy income or from whatever source. Get the income into the system faster. As our discussion progressed with the Treasury Department, we talked about the concept of lockbox banks.

Following that, based on those different studies that I had been privy to, when I came into office, I asked the Treasury Department to join us and attempt to put together an RFP, a request for proposal, which could go out to the industry, seeking a private sector way of handling not only the investment side but also the collection side and the accounting side of the trust funds and the 250,000 individual Indian money accounts and the tribal accounts.

I went to Treasury with the idea that they, as a department, were the ones that did the bulk of the work in money management for the U.S. Government, and I knew that they had been involved at various stages in the different studies that had been done in years before. It seemed logical that they would be the proper agency to help the Bureau of Indian Affairs deal with these problems and write an RFP.

So, at our request, the Treasury Department did work closely with us in developing the request for proposal, which was then submitted to the market. That request for proposal went through all of the stages of the Treasury contracting processes and they wound up with receiving some proposals, which are now in the process of being evaluated. Very soon a contract could be awarded to one of the banks that was given the opportunity to bid.

Senator MURKOWSKI. I wonder if I may just interrupt briefly.

Mr. SWIMMER. Surely

Senator MURKOWSKI. We are having a difficult time here finding specific identification of the six banks who allegedly bid or were

considered to be appropriate participants. I am wondering if you could identify those institutions.

Mr. SMOKOVICH. Let me give that to you. It's Citizens and Southern of Atlanta, First Chicago National Bank, Republic National Bank of Dallas, First Interstate of Los Angeles, Mellon Bank of Pittsburgh, and Bank America in San Francisco.

Senator MURKOWSKI. What are the collateral requirements put out by the Treasury Department through the BIA?

Mr. SMOKOVICH. Our requirements are basically that, to the extent a depositor places money in a financial institution and the amount of the deposit is going to be in excess of the FDIC insurance or some other insurance agency's insurance, that the bank put up certain forms of collateral.

Senator MURKOWSKI. What I was curious to know, do you have a crtiteria? Can they put up guaranteed loans or nonguaranteed loans?

Mr. SMOKOVICH. We do have published regulations and in some cases they're administered by us and some cases by the Federal Reserve for us.

Mr. SWIMMER. I think in this case, Mike, we're still governed by 25 U.S.C. 162a, and that limits authority as far as what can be pledged. Our trust funds, the trust funds that the Bureau would be managing, just as in the past have to be pledged with U.S. securities, or at least be that secure.

We have not proposed at this time that there would be any greater risk than what exists under the present 162a. We suggest that there might be some amendments later on to permit other forms of collateral to be put up. But at this time we are still requiring that the banks invest in Government securities.

Senator MURKOWSKI. Well, I think the question is—it would be interesting—I happen to have been in that profession for 20 years, and the more your collateral requirement, why, obviously, the more it costs for the service.

Mr. SWIMMER. That's right.

Senator MURKOWSKI. Service is competitive, and if you require U.S. Government obligations to stand behind, then the question is: What is the ratio? If it's 100 percent, why, you're going to have bids that are going to reflective on that, and if it's less or if you can have insured loans—there are all different collateral requirements—then it appears that this material is something that is available to you, but I don't know whether your effort is to necessarily get a reduced fee for the service that is competitively going to be offered by the six banks or whether it's the service that you're more interested in.

But, you know, obviously, the tougher your collateral requirements are, why, the more it's going to cost you for the lockbox service.

I don't mean to belabor the point, but we have Alaskan Native escrow funds that I am concerned about, and the availability to the west coast banks to utilize that. First Interstate is one that has that capability in the Northwest and Alaska, and, to some degree, Bank of America. But on the other hand, wire transfers are so immediate now that domicile isn't mandatory.

But, you know, when you go out for competitive services, why, the banks are very cost-conscious. They will give you the service, but if you increase your collateral requirements, why, you're going to pay dearly. So you are going to have to make that decision.

Mr. SWIMMER. Under current legislation, we don't have a choice about that. We would propose—and I think as we go through the process this year, we would hope that we can come back with some proposed legislation that might modify it. But except as to the guarantee of FDIC or of FSLIC, which would essentially insure up to $100,000, where there would not be a collateral requirement, we would require U.S. securities as collateral because that is what the law requires today and we don't have any flexibility there.

Senator MURKOWSKI. Just as a sidelight, I think everybody is interested in making sure that the public funds are adequately secured, but the requirement of oversecurity or U.S. funds vis-a-vis guaranteed loans, you know, I think the American Bankers Association and the Department of the Interior ought to get together and take a look at the collateral requirements in the best interests of the public because some of the costs associated with some of these collateral requirements, you can achieve the same thing with utilizing other type collateral but if you force the banks to pledge that much of their U.S. Government securities, why, you're just paying for it in the end when you could have used guaranteed loans and other things.

I don't want to belabor this. I think I would commend the BIA for operating the utilization of public funds certainty within the context of the law, keeping in mind the necessity of maintaining adequate collateral for the public funds.

Mr. TAYLOR. Mr. Swimmer, I have some questions that Senator Andrews would like me to ask.

First, I would like to know how you propose to pay for the contract management of these Indian trust funds? Will Interior bear the cost of these contracts, or will the costs be paid out of Indian trust moneys?

Mr. SWIMMER. The Interior Department, the Bureau of Indian Affairs budget would pay the cost of operating this contract. Presently we have an internal cost of somewhere in excess of $4 million. We expect, by the second year of operation, that most of the money that it takes to operate this contract can be covered out of those funds.

Mr. TAYLOR. Well, your statement indicates that in the first year of contracting, that you may seek additional funds or a rescission from existing program funds.

Mr. SWIMMER. That's right.

Mr. TAYLOR. Are we talking $4 million in the first year?

Mr. SWIMMER. The cost to us now is $4 million-plus a year. We expect that to remain during this first year of operations, and there could be some additional costs out of our budget that will have to be absorbed as we move into the contract. It would be phased in over the year. But we believe, once the total phase in of the operations are taken over by the contractors, that our participation then would drop enough that we would have moneys from the $4 million-plus we are spending now to assist in covering that burden.

But in any event, it would all be out of our funds, whatever it takes to operate the contract.

Mr. TAYLOR. When will you be making decisions on this question of possible new money versus a rescission? Will you keep the committee apprised of this process?

Mr. SWIMMER. Well, very much so. We will be making those decisions as we let the contract and start working with the contractors to work out the phasein process and see what the costs will be. We would have to notify the committee and advise the Appropriations Committee as to whatever additional costs there might be.

Mr. TAYLOR. How will the handling of the investment decisions by the Bureau of Indian Affairs change as a result of this RFP?

Mr. SWIMMER. The investment decisions will still be made by an officer within the Bureau of Indian Affairs but it will be made with the advice and counsel of the investment firm of the bank that is participating in this. We will use their services and their investment guidance as we make those decisions, but the ultimate decision remains with the Bureau as to the trustee.

Mr. TAYLOR. And you will still be investing in the same sort of securities that BIA currently invests in, is that correct?

Mr. SWIMMER. That essentially will be true. Now, the banks have the opportunity to invest the money however they choose so long as they have it properly collateralized. But that is the same process we use now. We use CD's; if it's more than $100,000, they have to collateralize it. They don't necessarily have to buy U.S. securities except for collateral purposes, but it would be collateralized or invested in Government securities as it is now.

Mr. TAYLOR. Does the RFP limit securities that can be invested in by the nature of a class A or class B security that has to do with possible insurance rates for FDIC?

Mr. SWIMMER. There is no limit on that. It simply follows the existing law.

Mr. TAYLOR. There is also a question that arose regarding capacity to invest in repos. Would you describe what a repo is and tell us whether this RFP would authorize investment in repos?

Mr. SWIMMER. It would not authorize that except, again, if the moneys were used for repos. A repo is a repurchase agreement between the banks and private industry. It would not authorize those kinds of investments except as, again, the money would be collateralized and the bank that has the trust funds could use those funds to, say, buy a repo. But those funds would be collateralized, so we would be looking toward collateral which would be a repurchase agreement that had been worked out but not specifically authorized as an investment without collateral.

Mr. TAYLOR. In light of the fact that the Bureau continues to play a decisive role, apparently, on correcting the account—I think that is how we refer to the investment account—how is the RFP going to improve the capacity or the efficiency of the Bureau in making the investment decisions? I might just preface that remark by saying that Price Waterhouse gave the Bureau a very excellent report on their handling of the trust funds over the past years. I know that is greatly attributable to John Vale and his efforts.

Mr. SWIMMER. Yes.

Mr. TAYLOR. But I am very interested in how the RFP is going to make his job more efficient.

Mr. SWIMMER. Well, I might refer to Mike for additional answers on this, too—but my thinking on this is that as the institution, the contractor, works through the investment of these funds. Any one of the six and a dozen others, have very sophisticated investment departments that deal with U.S. Treasury notes, bills, bonds, and other Government securities. It's likely that through them as far as affording us advice and counsel as to maturities and the kinds of investments that can be made, we would probably get some additional service. It would provide a little more sophisticated way of investing and getting the investment advice and could amount to several basis points higher than what we get now in the actual return on these investments.

So we are looking for a more streamlined way of getting investment advice to the Bureau and not relying quite so much on deposit insurance to cover us as we go out and deal with banks that aren't in real good shape. So, from that point of view, I think it would increase investment income that we could receive just through their advice and utilizing this particular contractor's investment department.

Mike, did you want to add anything?

Mr. SMOKOVICH. There is as also the significant aspect, that or whoever is managing that operation will have better information than they have now, in the sense that they will know how much money they have that has either been collected and deposited in customers' accounts or money that might have come in that might be unclassified in, for example, an overnight financial arrangement. They will basically have that every day. My understanding is that BIA doesn't have that type of a certainty that would be associated with this new system, and that could be a very big advantage.

Mr. TAYLOR. Does it also provide a greater knowledge base for the investment decider—John, at the moment, but I understand he is thinking about retirement—have been for many years, as I recall. But does it increase the knowledge base that the person making the investment decisions has available, just this access?

Mr. SMOKOVICH. I think that, as Ross was saying, if we had the information or know how much money we do have, and how much is on the way in, and have access to the investment markets through people who are proficient then the people at BIA would have a very powerful tool if they have got knowledge and they have got the people to make the transactions.

Mr. TAYLOR. What impact would there be if this RFP was rebid and it was opened up to banks or institutions other than the six lockbox banks which contacted us?

Mr. SWIMMER. Part of the advantage that I was informed about when I went to Treasury and asked for their assistance was that they already had bid contracts with the lockbox banks and that they did this routinely over the years. It's a competitive bid process, and they selected the banks on several criteria. By adding our work to their contract we could expedite the offering of a contract to one of the lockbox banks.

If we were to separate the services or go with a full competitive bid to all financial institutions, the contracting people in my shop

tell me that that is probably a 12- to 18-month process. Obviously, it's been 5 or 6 years since this discussion started, and I guess another couple of years wouldn't hurt. But it does seem like it has been kind of fits and starts, and one of the things I had hoped to accomplish while I was here as Assistant Secretary was to get a contract with a private sector organization that could aid us in the collection of the funds, the investment of the funds, and accounting for the funds.

So I have been anxious to try to get something moving as quickly as possible. I would say one of the disadvantages is, from the bureaucracy of it, is the time that it would take to do it. The other is that its value would be, in our mind, after studying this with the Treasury and our folks, it appears that the value would be minimal as far as receiving any better bids or finding any better institutions that might be able to do the work.

The six banks that were mentioned earlier that were proposed as the contractors to bid are all very capable, apparently strong banks, and could do the work. I am sure we could find others that are probably equal, but I am not sure that it would assist us or support us any better.

There did seem to be a reason for doing it, both timewise and for the value that we would be getting from piggybacking on, so to speak, the existing contract.

Mr. TAYLOR. As I understand the process, it breaks out into basically three components. One of them is collection; the second is accounting; the third is investment. Under the proposed contract, would you or the contractor be able to utilize the services of more than one investment firm or many?

Mr. SWIMMER. Well, the ultimate decision is ours in the Bureau. I suppose that as far as executing investments, we would use the contractor. If we weren't satisfied or felt like we needed to get additional investment advice, we could go out in the market. It's an executory type issue, though, and we would try to essentially keep the contractor whole. In terms of who handles the money from beginning to end, that would still be left to the contractor. But we obviously would have the option of going out anywhere for advice on the investment side.

Mr. TAYLOR. So, on the collection and the accounting, the RFP pretty well establishes the procedure as a contractor, but in ultimate investments, doesn't necessarily lock him into any one of the six lockbox banks as the investor?

Mr. SMOKOVICH. In processing transactions, BIA could seek advice from whoever they wanted to. They could have six investment counselors if they chose to.

Mr. TAYLOR. OK.

Mr. VALE. Pete, we plan to continue to use the Treasury for some of the investments, say, for instance, the very short term, the overnight investments, and Treasury securities. We plan to continue that operation. So, actually, it would be very similar to what services we have actually as far as investments are concerned.

Mr. TAYLOR. Any expansion of investment alternatives awaits further legislative recommendations from Interior, I take it?

Mr. SWIMMER. It does. We could put together maybe some legislation that would aid in market participation, and everything else.

The extreme limitations that we are under as far as 162a is concerned really don't make these funds attractive to large institutions unless they have a warehouse of Treasury bonds, notes, or bills.

Mr. TAYLOR. Well, this line of discussion leads, I think, to a final line of questioning, which involves the capacity of tribes to have an input into investment options of their own trust funds, their capacity to have knowledge of moneys that are in their account, and for them to gain some participation in the process. As you point out right now, the investment options are locked in through the Federal statutes.

But what procedure is presently followed so that there is an opportunity for consultation with the separate tribes and individual Indians with respect to investment of their trust funds?

Mr. SWIMMER. The tribes do have an opportunity to visit Albuquerque and John's office. They sometimes will give instructions such as designating depositories, assuming that they meet that high rate of interest and what have you. But I will defer to John on the investment opportunities. Generally, again, I think the office has been pretty much limited to CD's from different banks.

Mr. VALE. Basically, the criteria for investment funds is set by Treasury statute, and at the present time the tribes have an input as to the terms of their investments. Currently, we are taking a look at the possibility of pooling the tribal trust funds. But at the present time, there is no opportunity to put the individual tribe on a pool basis based on what the disbursement requirements are of the funds. Through this contract, I think it would allow the Treasury staff to consult with the individuals in the tribes more than they are now.

Mr. TAYLOR. It would make the knowledge base that is available to you, at least with respect to funds on deposit, that could also become available to the tribes as well, couldn't it?

Mr. SWIMMER. Yes; it could.

Mr. VALE. Yes.

Mr. TAYLOR. I know that there is a cadre of tribal investment and finance officers building. It seems to me that it is a valuable tool that could be available and might well fit into this.

I have one last question. Will this system improve the collection and management of Indian oil lease moneys that are now collected by the Minerals Management Service?

Mr. SWIMMER. There are several ways that it could, though much of it would be indirect. We are still working with Minerals Management Service to improve the collection of oil leases.

It is possible that under several scenarios that are being talked about between the MMS and the tribes, not the least of which are direct-pay concepts, that such a collections system would enhance the income to the Indians certainly by getting the money to them quicker. Even having the receipts from MMS going into the primary account with the contractor I think would work out better than what we do with Treasury now in collecting the moneys with MMS, putting it in an account, and then moving it out to our agencies, which we do now, and then having it disbursed from the agency to the individual Indian.

This way, the accounts will be maintained—the individual Indian account will be maintained—with the contractor and the bank will be depositing it to the account so that the interest is credited. That is one of the main areas where we now disagree with MMS: how we get interest paid to the individual Indian when the sum is collected by MMS and credited to the our account, the BIA. The contract does have some possibilities for improvements for individual Indians.

Mr. TAYLOR. Well, I don't think we have any more questions at this time. I think it has been a very fruitful discussion. Thank you all very much.

Mr. SWIMMER. Thank you.

Mr. TAYLOR. Thank you very much. We do have a copy of those two letters.

[Prepared statement of Mr. Swimmer appears in the appendix.]

Mr. TAYLOR. Our next witness is Mr. Paul R. Ferm, vice president of Citizens & Southern Bank, of Atlanta, GA.

STATEMENT OF PAUL R. FERM, SENIOR VICE PRESIDENT, CITIZENS & SOUTHERN NATIONAL BANK, ATLANTA, GA

Mr. FERM. Thank you, Mr. Chairman. It is a pleasure to be here this morning to address the committee on the subject of Indian trust fund moneys. Our organization is one of the six lockbox banks referenced earlier this morning.

I would like to focus our attention this morning on what the Indian trust fund moneys are. First, they are not a typical trust fund in many ways. They require an understanding to appreciate how complex they are. As was mentioned earlier, it is a trust fund that is approaching $2 billion, which includes more than 250 separate tribal funds and 250,000 individual Indian accounts.

As this fund grows, the complexity of accounting also grows. The Department of the Interior has limited resources to operate their collection and investment and disbursement functions related to this trust fund.

One of the delays that perhaps occurs, as was mentioned just a little bit earlier, is crediting money to the individual Indian accounts as well as the interest that is due the individual Indians.

There has been considerable discussion with regard to the need for new laws regarding the Indian trust fund, the kinds of investments. I feel, however, today that the greatest is with regard to the accounting and collection of the Indian trust fund moneys. The lockbox collection mechanism to accelerate moneys into the trust fund could generate considerable new revenues for the trust fund.

Second, with the accounting system that we are using, the technology that is in the industry today to finetune this trust fund accounting, could enhance the responsiveness of the Bureau of Indian Affairs to inquiries about private funds or individual Indian funds.

The key ingredient, we feel, is the complex accounting system that needs to be in place. As was referenced earlier, the Price-Waterhouse study of 1983 and 1984 had a lot of complimentary things about the management of Indian trust fund moneys. There were some recommendations, however, that were put in there in 1984.

One of the first was to implement a trust accounting system that could manage the complexity of what the trust fund was currently.

The second recommendation looked to modify the cash deposit procedure to establish a BIA trust fund concentration account with major banks, to collect money and to get the funds into the trust fund.

A third was to consider shifting the BIA disbursement activities away from U.S. Treasury and perhaps through this to allow moneys to stay in the trust fund just a bit longer.

These are some of the things that we looked at as we reviewed the trust fund moneys and how they had developed to date. The objective I think all of us are looking at is to maximize the yield for the trust fund, which has been outstanding for the past few years; second, to have an accounting system that can deal with its complexity; third, to enable the use of the Bureau through the various offices around the country to be responsive to inquiries.

These are some of the things: The collections system, the lockbox system of several banks, it is estimated that we could save and increase income to the trust fund, perhaps $500,000 to $1 million per year. It may be even more than that.

But these are some of the considerations that we bring before this committee today.

With that, I will answer any questions you may have.

[Prepared statement of Mr. Ferm appears in the appendix.]

Mr. TAYLOR. Could you explain how the fund is going to take this jump in value of $½ million to $1 million a year, based on modernized collections and disbursement?

Mr. FERM. Yes, sir; the current system, a lot of cash collections on checks, money orders, and so on, have gone into roughly 80-plus agency officies throughout the country. These checks often are not negotiated but are bundled and then sent to 12 central servicing centers who, in turn, consolidate those moneys and then deposit them into a local bank.

The thought of, if you will, the concept, of a lockbox is the remitters for the agency offices direct that directly into a lockbox bank who, on behalf of the Bureau, would be processing through that post office box 24 hours a day, 7 days a week, and accelerating the collection of those moneys. It gets back to the concept of time-valued money and we're able to put an estimate of, you know, $200 million or something like this into the trust fund if you have a one-time gain by that acceleration, that you have continued investment income that as long as you're on that kind of footing.

Mr. TAYLOR. There is also a savings that you see in the disbursement process.

Mr. FERM. Yes; there is. The current disbursement for the majority of the moneys flowing out from BIA are on an automated disbursement mechanism to Treasury. We understand it supports the BIA. Under the requirements the Treasury must abide, the trust fund money must be transferred to Treasury before the checks are transmitted or created and then sent out. If a contractor were to be handed the disbursement authority for the Bureau, the money would remain in the trust fund earning interest until such time as the check actually comes back to clear that account.

If you use the case that perhaps some individuals perhaps use the check as a savings for Christmas and things like that, you could have a lot of checks that could be outstanding in a month that the trust fund has lost interest income.

Mr. TAYLOR. Concerning the BIA accounts, the 250,000 individual accounts, could the interest that is gained in this way in this latest disbursement process accrue to each individual account?

Mr. FERM. Pro rata basis, yes. Based on the amount that each individual Indian perhaps had in the fund. That brings up another thing as far as being able to credit the individual Indian account with their accrued interest. There is one other thing that is really important to credit them at least monthly so that they have a statement and know what is in their account and the interest that is accrued in it.

Mr. TAYLOR. Under the proposal—of course, there are six different bidders on it, so I am not quite sure how I can phrase the question—but if your bank were to achieve the bid, how often would you be able to give a tribe or an individual Indian his accounting of their account?

Mr. FERM. We would propose a statement for each individual Indian account monthly, which would show the accrued interest and transactions that happened in that Indian's account for the month. Under the tribal ones, it would be the necessary to have the kinds of reports where there is a lot of activity, and the thing that we would also have would be an online access with each of the agency offices so that in between a month's statement for an individual Indian, were they to go into the individual, the Indian office, that office could query into the data base we maintain and give them the status of what is in there.

Mr. TAYLOR. That would require installation of special equipment at the agency level?

Mr. FERM. No; it would not. It would be utilizing equipment that is out there and they could dial and access our data base.

Mr. TAYLOR. There has been discussion of the possibility of provision of the law relating to the investment of Indian trust funds. We would be interested in your opinion on this question. We know that your bank manages trust funds, I believe, for the State of Georgia, and I would be interested in your comments on the conservative nature of that fund and the Indian fund and what might possibly be pulled up. Have you given that any thought?

Mr. FERM. Yes, sir; I think, first, the Bureau of Indian Affairs with the trust fund has a fiduciary responsibility to the Indians. The principle cannot be at risk. The authorized investments right now are Governments, Government-guaranteed certificates of deposit with collateral over the FDIC limit.

If you expand the investment options, I think it would need to be looked at to make sure that you maintain a high-grade investment potential. So much of the possibility for enhancements under the current system could generate new revenues and more responsiveness without changing the investment mix that is currently there.

A number of other trust funds that we have managed, we have managed, I think, for Government institutions, separate ones, the majority of those are in Government guarantees. I think that prudent management looks to BIA to manage this trust fund and be

cautious about getting out into the real speculative investments. If it were expanded, I think it would be the higher grades, perhaps, high-grade kinds of corporate bonds. But very possibly, I think you need direction to proceed in that.

Mr. TAYLOR. Well, I imagine this discussion is one that we will get into next year as Interior forms its thoughts on this issue.

I don't have any further questions. I thank you very much for your very excellent statement. I read the statement last night, and it is quite comprehensive.

Our next witness is Steve Berkowitz, the project manager for Price-Waterhouse study.

Steve, I think, is probably an appropriate followup here because I believe that study recommended some liberalizing of the investment policy. Steve is accompanied by Stan Goodhope, former special assistant to the Assistant Secretary for Indian Affairs.

Gentlemen.

STATEMENT OF SAMUEL GOODHOPE, FORMER SPECIAL ASSISTANT TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, ACCOMPANIED BY STEPHEN A. BERKOWITZ, PROJECT MANAGER OF PRICE-WATERHOUSE STUDY

Mr. GOODHOPE. Mr. Chairman, members of the committee, my name is Samuel W. Goodhope, and this is Stephen A. Berkowitz. We appreciate the opportunity to testify together regarding the BIA's Trust Fund Investment Program. Mr. Berkowitz is the president of the financial consulting firm of Berkowitz, Logue & Associates, and I am associate of the law firm of Fried, Frank, Harris, Shriver & Jacobson.

Neither of us is here today in any official capacity representing any clients. Rather, we are testifying only in order to share certain information gained while we worked on the indepth review of the BIA's Trust Fund Investment Program. Mr. Berkowitz, as you mentioned, was the project manager for Price-Waterhouse for the indepth study, completed in 1985, and I was responsible as the special assistant, as you also mentioned, for keeping track of the review for Kenneth Smith, who was the Assistant Secretary for Indian Affairs while the review was being done.

Our testimony today is being offered to provide a frame of reference for evaluating any effort to improve the BIA trust fund investment program. The Indian trust funds represent a legacy for tribes and individual Indians. Indeed, it is not an overstatement to observe that the trust funds represent the residual value of all the land, water, and natural resources which were appropriated from the tribes as the United States expanded from coast to coast. The trust fund investment program then can be characterized as an effort to manage this important legacy.

The tribes and individuals who benefit from this legacy deserve the same level of investment management sophistication as is available to the beneficiaries of private and corporate trust funds.

In reviewing the trust fund program and efforts to improve it, it is critical to consider the fundamental change which is occurring in the Indian world. Federal funds for important Indian and tribally related programs have decreased, and will continue to decrease, in

relation to need for those programs. We believe that the use of the tribal trust funds and the related invested income will become increasingly important to ensure the vitality of tribal Governments as well as the development of tribal economies on a long-term, self-sustaining basis. In short, as Federal Government financial resources continue to wither, tribes and tribal members will have to depend increasingly upon tribal financial resources such as the trust funds.

Given the changing circumstances in the Indian world as a prolog, certain findings and recommendations of the in-depth review become even more urgent. The investment return to the trust funds must be maximized subject to levels of risk acceptable to the participants of the trust and which are also in accord with tribal and individual investment objectives.

I would just like to mention two of the major recommendations on the investment side. First, the indepth review recommended that the BIA develop and implement an ongoing process to enable tribes and individuals to participate in the formulation of investment objectives for the Indian trust funds. Such participation not only would be in keeping with the precepts of tribal self-determination, but also would ensure that the tribes and individual Indians would be treated by BIA as what they are: as clients with specific investment requirements.

The long-term success of the investment program can only be ensured if tribes and individual Indians participate in the establishment of trust fund investment objectives and if processes are put in place for ensuring that reasonable investment objectives are met.

The second major recommendation of the indepth review was that a formal oversight committee with public and private sector representation be established in order to maintain the credibility of the investment process and to provide for policy-level decisions regarding portfolio management. This investment advisory committee, according to the Price-Waterhouse review, the indepth review, would review the investment strategy for managing the portfolios and, importantly, also review trust fund performance.

These two recommendations are as relevant today as they were in 1984, for the following reasons:

The trust funds currently are not invested in risk-free securities; and, two, the technology is available to manage the risk incurred by investment portfolios such that these risks are compatible with specific investment objectives which are developed by the tribes and individual Indians.

Mr. Berkowitz will be discussing these points in greater detail.

Mr. BERKOWITZ. Let me start with some comments on the risks assumed currently by the Indian trust funds.

Investment risks arise due to uncertainties regarding future returns. There exists both statute and case law to prevent the investment of Indian trust funds in the securities or entities that could default on debt service payments. As an example, we have 25 U.S.C. 162a, the *Cheyenne-Arapahoe* decision. There are others.

However, default risk is only one form of investment risk. The Indian trust funds are still subject to basis risk, reinvestment risk, and liquidity risk. When interest rates decline, prices for fixed-income securities, such as U.S. Treasury bonds, will increase, When

interest rates rise, prices for fixed-income securities will decline. Even if a fixed-income security is held to maturity, as interest rates fluctuate, the economic value of the portfolio fluctuates, thereby creating opportunities to realize capital gains and losses. Thus, a fixed-income security represents a gamble on the level and structure of interest rates and the holders are subject to what we call basis risk.

A related risk is the risk that when a security matures, interest rates will have changed and comparable yields may be unavailable. If interest rates have increased, although the portfolio may have foregone earlier opportunities to participate in this increase, it can benefit now. However, if interest rates have declined, then the portfolio will realize immediate decline in investment return as money is reinvested. Consequently, this is called reinvestment risk.

When the Indian trust funds buy and sell securities, even U.S. Treasury nonmarketable market-based issues, they incur transaction costs. In addition, the trust fund may incur substantial interest penalties should they liquidate certificates of deposit before they mature. As a consequence, there are costs to increasing or decreasing the amounts of cash on hand. Uncertainty regarding the necessity of incurring these costs is called liquidity risk.

The Indian trust funds thus are subject to basis risk, reinvestment risk, and liquidity risk. As the beneficiaries of the Indian trust funds have their capital at risk, it is both fair and equitable that they should be able to establish the economic objectives for which they are assuming these risks.

I would like to add some comments about investment objectives and risk management. Investment objectives represent a set of preferences regarding consumption and savings. Investment objectives make explicit the choice between consuming and saving at discreet points in time over the planning horizon. Investment objectives also state explicitly the risks the trustees of a fund are willing to assume. Plans to use Indian trust fund assets to finance the establishment of a sawmill lead to different investment requirements than a plan to use trust fund assets to finance a scholarship program.

Investment objectives will differ because the timing and amounts of cash flows associated with these plans differ. This leads to differing levels of tolerance for the basis risk, reinvestment risk, and liquidity risks that we have just mentioned. Some forms of consumption take on the appearance of investment. First, investment in a risky startup venture is a form of consumption when the probability of repayment is low. Investments in enterprises at interest rates below market level for comparable risk is both an investment and a subsidy. The subsidy, resulting from the difference between the interest rate charged for the loan and prevailing market rates, is a form of consumption.

Part of the objectives-setting process is to make explicit the cash flow expectations from alternative programs and thereby discriminate between savings and consumption. Thus, alternatives can be selected to maximize returns at some level of risk tolerance or minimize the level of risk required to achieve some target return. In short, investment objectives can be translated into return and risk levels.

By devising the formal process whereby tribes and individuals allocate their assets to funds holding portfolios that vary in maturity, a wide variety of specific investment objectives can be met, using two or three managed portfolios. Authorization to invest in equity securities and corporate fixed-income securities would broaden the array of risks and potential returns available to meet specific investment objectives.

It is fair to ask what return should be earned by each portfolio. The answer is: the maximum return that the market offers for the risk that each portfolio is authorized to assume. Although this will vary as prevailing interest rates fluctuate and market rate premia for various investments fluctuate, it can be measured over any time period.

In conclusion, the challenge in 1984 was to establish an investment process that increased the compatibility of tribal and individual investment objectives with investment strategies. This remains the challenge today. The real issues facing the BIA are not who shall manage trust funds or what services should be procured from vendors. Rather, the real issues, as described in the indepth review of the Indian trust funds, are: to what end will trust funds be managed, and with what level of sophistication?

The indepth review of the Indian Trust Fund Program recommended that a process be developed whereby tribal and individual Indian investment objectives could be set and a permanent oversight body be instituted to protect the interests of Indian trust fund beneficiaries, the clients.

The implementation of these recommendations would ensure that tribes and individual Indians would be afforded the services contemplated both by Federal Indian law and by trust fund law; that is, a trust fund investment program of comparable sophistication to that enjoyed by other public and private trust funds.

Thank you.

Mr. TAYLOR. You both worked on the Price-Waterhouse study. I think much of the testimony today is premised on the recommendations in the study.

The first question that comes to mind is, in authorizing a more flexible investment strategy, one that liberalizes the ecurities or areas where the funds of the trust funds could be invested, in your opinion, does the Bureau of Indian Affairs have the capacity to make the financial decisions that you've talked about?

Mr. GOODHOPE. I would like to respond first, and then Steve, if you would like to follow up.

The BIA is set up for certain appropriated funds disbursement purposes and programs. The Indian trust funds and the investment of those Indian trust funds represent a much different creature than what the BIA is set up to do, and I think that if we go beyond the limited investment authority which now exists to an expanded investment authority, then there might be even more of a mismatch between the purposes and the capability of the BIA and what capability and capacities are needed to invest these very important trust funds on behalf of Indians into a much wider range of investment possibilities.

Mr. BERKOWITZ. I would like to add to that response that managing a trust fund covers a wide variety of activities. One can

manage at the level of policy, much as the funds of a corporate pension plan are managed. Does the Bureau have that capacity? Certainly, without a doubt. Were the Bureau to adopt a model of money management, say, such is currently in effect by the Pension Benefit Guarantee Corporation, where there is policy and there are technical analyses done, managers hired to invest in certain market sectors and then held to account for their performance, certainly the Bureau can manage in the same way that—manage that process in the same way that Pension Benefit Guarantee Corporation manages that process or the Federal Reserve Bank Retirement Program manages that process or in the way most public, State, and municipal entities manage that process.

If you are asking the question does the Bureau have computer programs, the tools, the trading desk, to act as its own broker with the same level of efficiency as occurs in the private sector, or if you're asking does the Bureau have the tools currently for implementing some market strategies, I can respond to that. At the time we did the Price-Waterhouse study the tools were available; however, the resources to keep the data, loan the data, and produce the reports were unavailable at the time we did the review.

Mr. TAYLOR. Well, I think I am thinking more about, first, not only the strength and financial markets, but would have the capacity to take investment decisions that would meet the standards of the industry.

Mr. GOODHOPE. I would like to respond to that. Part of the investment process—which I think we got a little taste of this morning—the part of the investment process that is missing at this point is that the investment objectives and goals of the beneficiaries, the clients, are not being at this time transmitted to those people who are doing the investing. So, really before that part of the problem is addressed or is taken care of, it would be difficult to justify any expansion in the investment authority because when you expand investment authority and you still don't have a program for developing investment objectives and goals, it becomes even more difficult to meet industry standards, and it would be more of a burden of the BIA's personnel than you are imposing at this point.

I think it's important that there be a process for developing tribal investment objectives and goals—that that process be set up and that there be an advisory committee to make sure that those tribal investment objectives are developed. The potential for increased returns to the Indian trust fund through a proper system of setting and meeting investment objectives, the return through that better program would far outweigh any increased returns that will come about because of the better or more efficient trust fund mechanical system that we talked about earlier. If you know how long you should be going out on the yield curve, for instance, or if you knew how much money each tribe needed and what the funding requirements for all the tribes were, and you could set up an investment program to meet those needs, then you could increase the returns to the trust funds by going out further on the yield curve. I think this can be very easily teased out of the Price-Waterhouse report. Those increased returns far outweigh any of the increased returns from just having a better mechanical system and better set of trust fund operations.

Mr. BERKOWITZ. Let me add one comment. If your question is does the Bureau have the personnel, first of all the Government has the personnel that are capable; second, the Bureau has the personnel that are capable.

At issue here is formalizing the process and, as Mr. Swimmer testified earlier, there is an informal process for bringing objectives up to the investment process, the managers responsible for the investment process. But that is not formalized.

So, at issue is, one, formalizing that process; and two, describing precisely the role and precisely the level of investment decisions. Are we talking about security selection; or are we talking about establishing where on the yield curve should we be: should we have short-term securities, immediate term, or long term?

The short answer to your question is, yes, there is the capability in the Government, and I believe there is the capability in the Bureau. The longer answer to your question is, yes, but, there are some formal processes that needs to be implemented, and secondarily, there are some tools that need to be provided either by Government resources or secured from vendors.

My Taylor. Well, I think this is undoubtedly a discussion that we will be back to next year. I think this is little beyond the scope of where we're trying to get with this morning's hearing.

Thanks very much for the testimony.

Mr. GOODHOPE. Thank you.

Mr. TAYLOR. I will try to familiarize myself with the terms as I read the hearing record.

Next we will have a panel of witnesses: Elouise Cobell, vice chairman of the Association of Tribal Finance Officers, Browning, MT; accompanied by the Honorable Earl Old Person, chairman of the Blackfeet Tribal Council, from Browing; and Alan Parker, president of the American Indian National Bank.

STATEMENT OF ELOUISE COBELL, VICE CHAIRMAN, ASSOCIATION OF TRIBAL FINANCE OFFICERS, BROWNING, MT, ACCOMPANIED BY HON. EARL OLD PERSON, CHAIRMAN, BLACKFEET TRIBAL COUNCIL, BROWNING, MT; ALAN PARKER, PRESIDENT, AMERICAN INDIAN NATIONAL BANK, WASHINGTON, DC

Ms. COBELL. Mr. Chairman, I appreciate the time and effort your committee has made to address this issue of most importance to Indian tribes. I have with me today, of course, Earl Old Person and Alan Parker, who is president of the American Indian National Bank.

I have prepared testimony, which I would like to submit for the record, and I will summarize that statement now.

Mr. TAYLOR. Your statement will be made a part of the record as if it had been read in full.

Ms. COBELL. I am the vice president of the Native American Finance Officers Association, and treasurer of the Blackfeet Indian Tribe. My suggestions offered today are limited to the tribe's financial planning functions of the investment aspects of the proposal only.

Our organization was founded in 1982 and is comprised of finance officers, treasurers, and comptrollers representing over 50

tribal governments. We are a professional group dedicated to the improvement of the quality of financial management of tribal government and the promotion of their fiscal integrity.

Our activities include a tribal finance network which conveys financial information among our tribal constituents and between external government agencies. We provide training and professional assistance to tribal organizations and recommend appropriate actions to be taken by and standards for tribes and government agencies with respect to their financial systems.

Today's oversight topic is both timely and of direct interest to our officers who work on a daily basis with their respective Federal counterparts in the management of trust fund. Among other operational improvements, the investment proposal would introduce professional portfolio management which would allow tribes to select various options consistent with their respective investment objectives and liquidity needs.

The procurement request places responsibility with the BIA to increase the interaction between tribes and the contractor in developing investment strategies and in reviewing investment performance. To do so, this requires an efficient investment coordination system between the BIA and the tribes. It also assists tribes in adapting and improving their own financial management planning systems.

The proposals addressed these objectives as not in immediate need and, therefore, was not inlcuded in the present proposal. Based on the views expressed at our annual meeting of the Native American F ance Officers Association, we believe that parallel efforts should be made to enhance tribal interaction from the outset so that our offices can be begin to plan and to participate in any new investments on their tribal assets.

We offer the following suggestions for Federal consideration: that tribal consulting, briefing, and training sessions are necessary on any new operational requirement resulting from private sector management;

Assistance to tribes in defining and establishing custom-tailored investment objectives should be made available;

Assistance to tribes in selecting any new investment portfolio options resulting from tribal management should also be made available;

Development of effective tribal budgeting, forecasting, and financial planning systems is a threshold. Information resulting from these functions is fundamentally necessary so that investment managers may develop and recommend the best portfolio options for tribal investment;

Improvements to the BIA's current investment coordinator systems are necessary so that its investment directions to any future contract manager will reflect tribal investment performances and cash requirements.

We believe that the Native American Finance Officers Association network could provide an essential link in the proposed investment management services of the Indian trust funds, and those areas of suggested improvements offer a potential role for our participation. I hope these comments are helpful to the committee and warrant your consideration.

I think that I would like to turn it over to Earl Old Person at this time.

[Prepared statement of Ms. Cobell appears in the appendix.]

Mr. TAYLOR. Thank you, Ms. Cobell.

Mr. Old Person, please proceed.

Mr. OLD PERSON. Mr. Chairman, I am here observing this hearing you are having here today, but being a tribal leader since 1954 and a chairman since 1964, I have watched and I have observed the many authorizations that have dealt with the Indian people. I think today the discussion that we are having is something different. We are not discussing original funds, we are talking about money that is deriving from Indian reservations in many cases, individual Indian people, individual members from, for instance, my tribe. Very much we are discussing that.

I think it is very important that the Indian tribes, the Indian people, be made aware, that they be consulted with, of what is in the making, because our people today—I think there was a time way back when we followed, but today we are not just following, we are watching and considering and attempting to forumulate decisions regarding the issue of our tribal trust funds.

People back on the reservations are not ignorant any longer. We are becoming informed. We are questioning what is happening, whether it is tribally owned or individually owned. We as a tribe think that if we are not informed of these many things that change time after time, we are unable to be able to assist or give any information to our people.

So that when we are talking about these things such as trust funds that is deriving right from the reservations, it is very important because many of our people, when they have an individual money account, they are very concerned. Other people on these Indian reservations, this is what they totally depend on. They look forward to their money. I think some of the things that they are going to ask, and we are going to continue to ask, in spite of this change, it may cause to get money to the individuals in a way where it is going to be speedy. But I think the other questions are as to what will be the investment. I heard something mentioned here about assured interest. Is that interest gong to help that individual money owner, or is it going to help someone else? These are some of the questions that are going to come up.

So, what I am saying today, I am not saying this is a bad thing, that this is not going to be good. But I am saying let the people who are going to be directly involved and who are going to be dealing with and working with, let them know about it, let them know what is going to happen.

We have our own financial people. I think if they can be given an opportunity to have this kind of an insight, this kind of involvement, they, in turn, can be very helpful to the Indian tribes insofar as alerting them to what is going to take place and what we must say.

I am speaking only on behalf of the Blackfeet people, and I am sure that all our Indian tribes, Indian leaders, are just as concerned and want to know what is happening. I think the Indian people don't even know what could happen here today. So it is important that we are here to relay this message and that there

would be more of them in order that we may understand, communicate, and be ready to go with this change.

Mr. TAYLOR. All right. I appreciate your statement very much. I might say that this is exactly why Senator Andrews called this hearing, because we're having trouble getting information ourselves and I think there has been a lot of misunderstanding or uncertainty about exactly what this is all about. This is exactly why we did call the hearing, as I say. I share your feeling.

Mr. OLD PERSON. I would like to relay the message to Senator Andrews that we appreciate this opportunity that they have made available for these kinds of discussions.

Mr. TAYLOR. Thank you, Mr. Old Person.

Mr. Parker, did you have a statement?

Mr. PARKER. Mr. Chairman, I also have a written statement, which I provided to your clerk. I would submit that for the record.

I can only support what has been said by Chairman Old Person and Elouise Cobell on behalf of the Native American Finance Officers Association.

We at the American Indian National Bank have followed developments regarding the Indian trust funds. This is a natural interest on our part as well as an attempt to keep our own investors and clients informed if there was anything that was developing that would be of interest to them, as well as the possibility that the bank itself may see a business opportunity down the road.

But what I would say, and have said in my statement, is that the proposal, as we have evaluated it, appears to be very sound. The Bureau of Indian Affairs, and the Department of the Treasury are responding to recommendations that have been made by highly qualified individuals and firms.

The idea of linking it up with the network or the lockbox banks makes a lot of sense. The advantage that can be gained by contracting out for the collection of the money, the accounting of the money, the distribution of the funds, and the investment of the funds, are very apparent as you begin to examine what is being proposed.

The one fundamental ingredient that was not addressed, in our opinion, in the RFP was the provision for working directly with the Indians who own the money. The National American Finance Officers Association is a group that is already responsible for advising the tribes directly regarding the management of their money.

They are an organization that has stepped forward, and one would assume that the Government would be working with them in the future.

I think that as we have perceived what has been going on over the past couple of years, the trustee is responding to a need to correct management deficiencies. Particularly, I think, in the accounting area as well as investment management areas. So, the proposal to contract for these functions is a proposal which will respond to the needs which the trustee has perceived.

I think the Indians have also perceived a need to be able to access state-of-the-art technolgy in terms of money management, and the opportunity for the finance officers and tribal officials to work directly with a highly capable private organization such as would be represented by any one of the six banks is a very positive

thing. I think all of us can see that as this is developed, if it is properly presented so that they can link up directly and not have to go through the intermediary of BIA and the area office coordinators, if there is this direct connection between tribal officials and the contractor, then I think we will see this opportunity turn into some benefits for the tribes.

I would just make a couple of points then just before closing my statement and then would be available for any questions you have.

You asked earlier about potential changes in the legislation that governs the management of the trust funds. I would like to support those opinions that have been made this morning with respect to the idea that it is probably premature to be making proposed amendments to 162a. I think the first step has to be taken to contract with the management of the funds, including collections, accounting and distribution. I think as a second step, though, to begin to look at making the 162a more flexible and provide more options under 162a, that makes tremendous sense.

There are a couple of things that we have identified as potential changes that I think that we would like to see. Certainly, we would be happy if the committee would do some followup on that. One would be to authorize the establishment of a mutual fund. As you well know since the committee has done its own research on this, mutual fund is not an eligible investment under 162a even though the fund itself may be comprised of securities which are eligible investments.

What we had envisioned as a mutual fund concept or mechanism is that a number of tribes who choose to direct their funds into a mutual fund can take a much more active role. They could participate in the investment objective-setting process and consistent with the requirements for security and proper management, be involved in management of the moneys.

The other idea, just briefly, would be to authorize the investment of the trust funds into BIA guaranteed loans. As you know, under the Indian Financing Act, BIA has a program that authorizes a 90-percent guarantee on loans for private business development financing.

The idea is for the tribal leaderhip to have an opportunity to put their money to work and provide an incentive for lenders who might be originating those loans. Banks would know that there is a process in place under which those loans can be sold to either the trust funds management contractor or, if you're looking down the road, perhaps to a tribally owned mutual fund that identifies a percentage of their portfolio which could be made up of those guaranteed loans. I think that that could result in some benefits in terms of providing a source of funding for Indian business loans and an incentive for lenders to make those loans. At the same time, the purchase of BIA guaranteed loans could represent a high yielding secure investment for the trust fund itself.

These are just a couple of specific recommendations that I would make at this time.

I would conclude by again stressing my appreciation on behalf of the bank for the opportunity to present testimony and to Senator Andrews for taking the initiative of scheduling this hearing.

[Prepared statement of Mr. Parker appears in the appendix.]

Mr. TAYLOR. Well, thank you, Mr. Parker.

I think in the testimony that we received from the Assistant Secretary for Indian Affairs and also from Paul Ferm, the Citizens & Southern Bank, I get the impression or the feeling, belief, that what is being put in place here really has the capacity to enhance the tribal capacity to have input on the investment and management of their own trust funds.

I can see a little triangular problem, and it is perhaps unfortunate the RFP itself does not specifically address the manner in which the tribes might have the opportunity of investment. With the Albuquerque investment BIA office there, the collector or collecting bank, whichever it might be, I can see a little triangular problem, but it does strike me as something that could be worked out, even though it is not presently specifically taken care of.

I certainly appreciate, Ms. Cobell, your testimony very much, and that of Mr. Old Person.

Obviously, Mr. Old Person, your statements on the subject are very welcome and most helpful to us.

We have two more witnesses today. Mr. Richard LaFramboise, the chairman of the National Tribal Chairmen's Association was unable to make our hearing today. Rebecca Adamson, president, First National Finance Project, accompanied by Theresa Carmody.

Ms. Adamson, please proceed.

STATEMENT OF REBECCA ADAMSON, PRESIDENT, FIRST NATIONAL FINANCIAL PROJECT, ACCOMPANIED BY THERESA CARMODY, FREDERICKSBURG, VA

Ms. ADAMSON. First, I would like to thank you very much and express our appreciation for being allowed to be a part of this hearing today.

Everyone seems to have already stated the good ideas. Our point would be to assure that there was a focus on the tribes' independent decisions about the trust funds. We will be submitting a formal statement for the record at a later date.

Mr. TAYLOR. We will hold the record open for 10 days. We are coming to the closing days of this Congress.

Ms. ADAMSON. We will make it.

My statement today is limited to the fundamental issue of tribal control and access to the trust funds. What I would like to speak about in my section of the testimony is to provide for the philosophical foundation and the working parameters whereby we can begin recognizing the tribes' beneficiary rights.

First National is a national, nonprofit organization dedicated to assisting tribes in obtaining capacity to achieve control over their reservations' economic future. The organization by its national strategy for moving reservation development forward to include a master's degree in business and reservation management and a marketing diploma, and a research data base. But more to the point, we offer a full range of technical and business activities directed in the charter under small-scale Indian resource development.

All our economic activities are specifically designed to reduce tribes' dependency upon Federal funds. As such, our organization

will not accept any Federal dollars for operations. We are funded primarily by foundations or by individuals. We have no special interest in this particular issue except to say we have no intention of contracting or continuing to contract with the management of tribal funds nor do we represent the clients that want to manage the tribes' funds. Our interest lies with the tribes and seeing that the tribal trust funds start being recognized as the tribes' money.

Essentially, as I have already said, we support the recommendations in the Price-Waterhouse study and would like to acknowledge the strides that the BIA has made in trying to implement certain aspects of their study's recommendations.

However, to us the most fundamental question is: How can tribes' economies begin to derive direct benefit from their trust dollars, while attracting a reasonable rate of return with some sort of guarantee? This is the fundamental issue. Tribes are the beneficiaries, and this is their money, yet the only effective control tribes exercise over the trust fund is in the decisions made to either remain in the trust or to take them out of trust.

Under any other standard, according to tribes people, the law of trustee, or just applying common law practice, any trustee or any citizen has the duty to take into account for investment management a trust in the name of the beneficiaries. The standards are quite clear that trust management practices are set in order to maximize the use of the proceeds in light of the needs of the beneficiaries.

The $1.7 billion in trust funds, if employed properly, could give tremendous benefit in realizing an impact on the tribes' welfare. In addition, these awards can also be used as leveraging tools when placed with financial institutions. Tribes directing the deposits of their funds could take advantage of leveraging potential, negotiating lower interest rates. The Department of the Interior's proposal calls for 80 percent of the work to be distributed to an individual. This is a radical departure from any fiduciary role performed by other trustees.

In fact, the very existence of many universities, foundations, or religious organizations are based upon preservation of their trust funds, not the wholesale participation back under BIA's trust structure. Most such trust managers would vehemently oppose dividing the tangible assets and distributing the proceeds. Just as the trustees' management of endowments held in trust for education for students at the University of Georgetown, we see the fund management to be—the decision in this disbursement—the role of the university's property holdings and tangible assets for the individuals.

We must seriously raise the question of BIA as to its per capita practice. There are options to per capita. The trust fundees represent a significant capital asset that provide no direct benefit to the tribal beneficiaries. The only reason, to our knowledge, that tribes are not realizing tremendous benefits from their own money at least at that time is solely due to the preferred process of the trustees managing the fund.

What we should see is a very close working relationship between trustees and beneficiaries. Yet, the record shows no effort has been made to BIA to obtain this very vital input. For example, we surveyed over 25 percent of the tribes having trust fund accounts. Ap-

proximately 1 percent have read the Price-Waterhouse report or knew who where their investments were or were even aware the RFP for trust fund management.

BIA did send us a notice after we made a request. But all in all, little has been done to recognize the tribes' beneficiary rights. The trustees—in this case, BIA—is offering enacting an act recommended in the late 1950's and early 1960's when at that time tribes were held incompetent and not capable of controlling the tools of the education process for their children.

Back then, we were told we didn't have the skills to run our schools, while these same systems of education were being cited as a national tragedy. A lot has happened since then, and yet for all the changes, here we are asking for you to provide the mechanisms that will uphold the tribes' rights to direct and control their future.

Again, we contend that the most fundamental issue before us is to press something that will take into account the tribes' rights to set their destiny and begin to direct the flow of the economic energies of the tribes.

In closing my portion of the statement, we will be bringing our testimony that will include several models of multifunding service processes and our comments on the recommendations contained in the Price-Waterhouse study. But I will conclude, and right now I would like to turn it over to Ms. Carmody for her comments.

[Prepared statement of Ms. Adamson appears in the appendix.]

Ms. CARMODY. I would like to speak to the issue of the Judgment Fund Distribution Act and the changes we feel need to be made in order for tribes to gain control over the development of use plans for their trust funds. As you know, the Secretary of the Interior is required to submit a plan to Congress for the use or distribution of each tribes' trust funds. In addition, the Department of the Interior is required to hold hearings to obtain the testimony of leaders and members of the Indian tribes regarding development of each distribution plan.

Judgment fund awards could potentially provide a much needed source of capital for many tribes. However, in the past and up to the present, the Department of the Interior has tended to favor per capita distribution of judgment awards whereby 80 percent of an award is distributed in per capita payments to tribal members with the remaining 20 percent invested by the BIA Branch of Investments. Millions of dollars in awards have been distributed in this manner, with seemingly no attempt by the BIA or Congress to change the status quo.

In congressional hearings held in 1982 before this committee, Chairman Cohen spoke to the issue of per capita distribution of judgment awards when he said:

> I would think that, consistent with the fiduciary responsibilities under the law, that Interior could structure something which takes into account the long-term advantage of investing money rather than simply parceling it out at certain levels, having it spent until there is nothing left.

Congress, in an attempt to remedy the problem, legislated amendments to the Distribution Act in 1983. Sec. (3)(b) clause 5 requires the Secretary, in the development of the use and distribution plans, to survey past and present economic development plans of the tribes, evaluate long-range benefits that might accrue to the

tribes from the retention of judgment funds for tribal program purposes, and actively encourage the programming of such funds for economic development purposes.

In addition to this section, section 3(b) clause 1 of the act states,

> In preparing a plan for the use or distribution of the funds for each Indian judgment, the Secretary among other things should be assured that legal, financial, and other expertise of the Department of the Interior has been made fully available in an advisory capacity to the Indian tribe which is entitled to such funds to assist it to develop and communicate to the Secretary . . . its own suggested plan for the distribution and use of such funds.

In our research we found that this mechanism does not exist. Some tribes have sought to develop distribution plans which invest rather than per capita their awards. They have received no assistance or encouragement from the BIA when they opt to do so.

To support this statement, Senate Report 97-658, states that public hearings records which have accompanied distribution plans submitted to Congress are generally devoid of any indication that Interior personnel have in any way recommended, advocated, or even raised questions at tribal meetings which would encourage utilization of judgment funds for program purposes.

We conclude that the BIA division responsible for assisting tribes in the development of their distribution plans do not have the staff with economic planning or business backgrounds to properly assist tribes in the development or economic or investment-oriented business plans.

Mr. TAYLOR. There is a philosophical problem in addressing the issue. In fact, we might have addressed it in that piece of legislation, but the money does belong to the Indians and the statute itself sets the 20 percent for moneys and Trustee and Tribal Program purposes. That can be waived.

I do share your thoughts on this thing, however, in that I think in the past, all too often, the Bureau has treated this as a 20-percent mandatory program allocation and an 80-percent automatic investment going to capital. We were trying to point a direction in that act. I think I share your feelings that the problem is is it properly implemented.

But I would make one comment about the current policy of this administration. I think they finally turned the corner and that I know Assistant Secretary Swimmer definitely supports the notion of funds being maintainted by the tribe itself and not going out in per capita. We are still running somewhat hit-and-miss at this end of the street as well as up here on our end of the street, but I think your points are certainly very well directed.

I know that per capita distribution is something that the tribes have to made a decision on, but we only want to assure that all the options for use of judgment fund awards are presented to the tribes, For example, the Saginaw Tribe of Michigan, opted to invest 100 percent of their judgment award but had to seek special legislation to do so. Under the current Indian Fund Distribution Act, they should have been allowed to do this.

Before the tribe came to their decision on investment versus per capita distribution, there were a number of community workshops held to explain exactly how investing the trust money would benefit the tribe. I think this kind of option has to be presented to every

tribe due to receive claims awards. In our view it is a statutory requirement.

As far as Interior is concerned it was not until February 1986, that Interior finally supported the Saginaw legislation—prior to that, they opposed it. It's a recent reversal, and prior to that 1986 point, the tribal council recommended investing 100 percent of their claims award but was forced to seek the special legislation to do that. In the course of time, they had to spend thousands of dollars of their own money to do that.

So, I think, per capita is fine for the tribes that really want it, but if they are not presented with other options, what they will most likely choose per capita distribution because that basically is what has presented to them in the past.

Mr. TAYLOR. Well, we certainly are aware of the problem. Thank you both very much.

We have one further witness: Mr. Ernest Robson, principal with Multinational Business Service, Washington, DC.

STATEMENT OF ERNEST S. ROBSON III, PRINCIPAL, MULTINATIONAL BUSINESS SERVICE, INC.

Mr. ROBSON. Thank you. We too appreciate the opportunity to participate in the hearing. In light of the time, I will just summarize my testimony and submit the full statement for the record.

Mr. TAYLOR. Your statement will be made part of the record as if read in full.

Mr. ROBSON. We agree with the basic concept—that is, request for proposal—but believe it should be expanded to include an additional safeguard, which is: a policy audit.

Now, we have not submitted a proposal nor any response to this RFP. We don't, as a policy, bid on Federal contracts. We have, however, been involved in a number of contracting out of privatization efforts by the Federal Government and State and local governments as investment bankers or as consultants to the governments or industrial firms involved.

The principals of our firm include both a former policy official of the Office of Management and Budget and a former head of a private investment banking firm which included a Government securities dealership.

We think that the concept of contracting in the private sector for these financial management services will benefit all the parties, or can benefit all the parties: The Indian tribes and individuals, the U.S. Government, and the taxpayers who support it, as well as the private sector.

As stated by other people testifying, probably the most important benefit in addition to the improvements in transaction management and investment management would be to provide the Indian tribes and individuals with a greater ability to control their financial affairs with better information. The Federal Government and the taxpayers can benefit by not having to provide services which are more suitably provided by the private sector, in our opinion. Finally, in providing those services in which it has longstanding experience, the private sector can also benefit.

We feel that the investment community, in concert with the experts at BIA, is extremely qualified to manage the investment portfolio so that the financial reports and audits described in the RFP would provide a basis for monitoring the integrity of the financial system that is proposed to be set up.

We have found that most privatization efforts, however, require an extra added element of communication and trust, one that is not usually provided for in most contracts. I think some of the testimony today has simply emphasized that point, and I don't think I need to elaborate. Each participant—the Government, the Indian tribes, and the private sector—would be operating under different sets of rules and restraints, different goals than each normally faces.

Based on our experience, we feel that the RFP needs to be amended to include a key element essential to, in our experience, most successful contracting-out efforts; namely, a policy audit. The addition of the audit is essential to ensure the success of the system. Such an audit would review the contractor's investment decisions with respect to enabling statutes, administration policy, operating and reporting procedures of the Federal financial establishment, and the Congress.

This audit should be performed by a group with working knowledge of both the Government securities market and the Federal financial establishment. Financial audits which have been described in the request for proposal, we feel, do not address these concerns. Many Government officials don't appreciate that investment in Government securities, for example, when you ask, "What's a repurchase agreement, and what kinds of risk is involved?" I think Mr. Berkowitz amply pointed out that even with Government securities, there is a significant amount of risk which could be involved.

On the other hand, we have found that most private sector institutions don't understand the more complex review and approval processes typical of the Federal Government. For example, most bank trust department officers probably have not even heard of the GAO or OMB, much less appreciate them—except maybe bank trust officers from Georgia, I guess, when we refer to OMB—much less appreciate the critical role these institutions play in judging success or failure in contract performance.

The results of periodic policy audits, paid for by the contractor and made available to the contractor, to Congress, the relevant Federal agencies, and especially the Indian tribes, will provide the bridge necessary to integrate the efficiencies of the private sector with the social responsibilities of the public sector.

In summary, Mr. Chairman, we feel that the Treasury Department and the Bureau of Indian Affairs should move forward on this contract. It is our professional opinion that the contract should also include a requirement for periodic policy audits to be performed by a private sector firm independent of the contractor who is awarded the contract.

Thank you. I would be glad to answer your questions.

[Prepared statement of Mr. Robson appears in the appendix.]

Mr. TAYLOR. Thank you. I have been attempting to figure out just exactly what a policy audit is. I sounds to me like it's a little

bit along the line of something the Government Accounting Office does. How is it that your firm can perform it and not GAO?

Mr. ROBSON. Well, there are similarities to the functions that both GAO and the OMB perform. As a matter of fact, each of the principals in our firm has been in the Office of Management and Budget for between 5 to 15 years, depending upon the individual. However, it also is different—and having been in OMB myself, I know that as an OMB examiner I would have had no understanding of the Government securities industry at highest levels, for example. Also the timing is important. Most GAO or OMB audit's are after the fact, not an ongoing process which can identify potential problems before they get too serious.

That kind of expertise combined with the sort of principles that GAO or OMB would follow in monitoring or reviewing a program, we do provide, but it is an area where we have the highest level of private sector experience as well. For example, I was at one time the head of an investment banking firm which invested maybe $20 billion or $30 billion a year in Government securities.

Mr. TAYLOR. You seem to have some insight into the repo market, in reference to asking Chase Manhattan Bank about its experience.

Mr. ROBSON. Yes; it was about a $150 million experience.

Mr. TAYLOR. It does strike me that these policy audits certainly could be of value not only to the Government but also to the private contractor. So, we appreciate your testimony on that. Thank you, sir.

That is the end of our witness list. The hearing stands adjourned.

[Whereupon, at 12:06 p.m., the committee was adjourned.]

APPENDIX

Additional Material Submitted for the Record

PREPARED STATEMENT OF ROSS SWIMMER

Mr. Chairman and members of the Committee, I am pleased to be here today to discuss the Bureau of Indian Affairs' improvement of the management of trust funds and the contract for trust fund services to be awarded by the Financial Management Service of the Department of the Treasury on behalf of the Bureau of Indian Affairs. With me is a representative from the Financial Management Service, U.S. Treasury Department, who has worked with us in close cooperation to arrange for the improvements needed to maximize the performance of the Indian Trust Funds.

This improvement project represents one of the most ambitious efforts ever initiated by the Bureau. The Bureau has set a course of action which will directly address the material weaknesses in the trust accounting system, the inefficiencies of redundant multiple systems, and the lack of earning capacity due to inefficient cash management of trust funds.

Currently, the Bureau manages trust funds totaling approximately $1.7 billion. These funds include: Tribal Trust Funds, Individual Indian Monies, Contributed Funds, Alaska Native Escrow Funds, Irrigation and Power Project Funds and the Papago Cooperative Fund. As of September 30, 1985, there were over 250,000 participating accounts. The Tribal Trust (TT) and Individual Indian Monies (IIM) funds were the largest, both in terms of funds and participating accounts (TT--1500 Accounts, totaling $1.18 billion; IIM--250,000 Accounts, totaling $.482 billion).

Trust Fund collections are received over the counter, by mail, by wire, and by interagency Treasury transfer. Collections received at the local agency level are handled by authorized agents who may be foresters, realty

specialists, administrative clerks, etc. These local collections are mailed to the Area Offices for deposit at commercial banks, for credit to the Treasury accounts. Area Offices record the receipt transactions to the General Ledger Control Accounts for field level collections. The Central Office receives and records the wire and Treasury transactions.

While the Bureau's investment performance has compared favorably with industry standards, there have been many problems associated with the cash management and accounting services for these accounts. Examples of these problems include, but are not limited to, the following situations. Collections for which ownership is unknown may not be deposited in interest earning suspense accounts pending distribution, but may be held at the collecting level until proper ownership is determined. Posting principal and interest dollars to subsidiary accounts has been inaccurate. Tribal and individual accounts may be overdrawn because accurate balance information may not be readily available. The mail time from payor to agency to area deposit locations results in a float loss to the beneficiaries estimated at $2.0 million to $3.0 million annually. Currently, benefits of an unknown amount from the float on Treasury check disbursements are lost to the beneficiaries because the Bureau records disbursements at the time the check is written rather than when presented for payment through the bank clearing process. Investment and accounting transactions may be incorrectly recorded and not reconciled on a systematic basis because of the fragmentation in responsibilities. The Bureau uses five systems for financial control and none currently reconcile.

The General Accounting Office Audit Report of September 8, 1982, addressed the serious operating deficiencies which precluded the proper discharge of trust fiduciary responsibilities by the Bureau. Controls over cash receipts and cash disbursements were found to be inadequate. Reconciliations were not performed, and as a result, investment decisions were based on unreliable

information. The auditors could not certify the cash position of the trust funds because of the millions of dollars in unreconciled differences. The Bureau's response to this audit indicated that controls would be strengthened and the reconciliations performed.

In September, 1983, the Inspector General of the Department of the Interior issued an audit report on "Accounting Controls Over Tribal Trust Funds - Bureau of Indian Affairs." The report reiterated the findings and recommendations of the previous GAO report, and recommended the Bureau determine the feasibility of contracting all or a portion of the trust fund activity. The report also recommended that the Bureau establish one system with fully integrated and compatible sub-systems to keep track by each trust fund of cash collections, cash disbursements, investments, and interest earned. The Bureau responded that reconciliations would be performed and a single system would be developed.

The Bureau contracted with Price-Waterhouse and Company to perform a comprehensive study of the Bureau's Trust Fund Accounting and Investment functions. The reports of the study and analyses which were provided to the Bureau in May, 1984, included recommendations that processing and deposit reporting services should be obtained from external sources.

The Under Secretary of the Interior, concurrently with the Bureau's Price-Waterhouse study, requested the Department of the Treasury to conduct a review of the financial operations of the Department. The review report identified Interior Bureaus that needed to improve financial operations, with the Bureau of Indian Affairs heading the list.

Based on the Treasury study team recommendation, the Bureau published a request for information to determine the private sector capability to provide the services the Bureau needed to strengthen and improve the financial

management of the trust funds. The responses indicated there were state-of-the-art systems available and a high level of interest in possibly providing the cash management, accounting and investment services.

When I became Assistant Secretary, one of my first priorities was to begin the action necessary to strengthen the administration of the trust funds and maximize the earnings on investments. The recommendations of the General Accounting Office, the Inspector General's Office, the Price-Waterhouse Study Report, the Department of Treasury Financial Review Report, Congressional inquiries, the 1985 Request for Information, and the Bureau's own internal management and internal control reviews all pointed to the same conclusion - the Bureau needed to look to the private sector to acquire the services necessary to effect the improvements. Also, while the Bureau had responded positively to all the audit recommendations, corrective measures were spotty and immediate action was necessary to prevent further deterioration.

This urgency led to my decision to approach Treasury Secretary Baker to request assistance in the improvement effort. Both Mr. John Rogers and Mr. Gerald Murphy, Assistant Secretaries, offered support and directed their respective organizations to assist the Bureau of Indian Affairs in this effort. It was determined that obtaining the financial trust services through the existing Treasury Lockbox Network was the best approach to assure quality service and optimum compatibility with other Federal programs. Treasury staff supported the Bureau's need to have an integrated service encompassing investment and distribution of earnings, custody accounting, lockbox, and concentration services. Financial Management Services agreed to solicit these services from their lockbox banks who have a proven record in moving Government funds and controlling financial information.

The Lockbox Network Banks, which were competitively selected by Treasury, have a successful track record. Since inception in 1983, the savings in

increased earnings to the Government is $29 million. The network currently handles 180 accounts with an annual cash flow of $15 billion for 46 agencies and 7 departments.

Under current statute, 25 USC 162a, the investment of the trust funds is limited to securities which are unconditionally guaranteed as to both interest and principal by the United States. The statutory requirements also limit the investment decisions to the trustee. These restrictions result in a fully directed investment portfolio comprised of conservative, fully insured securities, which in effect limits any procurement of investment services to only the execution of buy and sell transactions and investment advice.

In consideration of the need for expediency, the limited competition among the Treasury network enabled a much shorter time period for award. It also will enable the Bureau to obtain the cash management, custodial, and investment services from one financial institution, which supports the single responsibility and accountability goal. Cost was also a factor. Separate contracts for the ancillary services would create additional administrative overhead costs. The services requested include: Investment advising; executing buy and sell orders from BIA; maintaining custody of held securities; maintaining detailed accounts for both tribes and individuals; accounting for all transactions; and reporting all financial activities to the BIA or Treasury, as prescribed. The benefits of including the Investment Service in the contract include the obvious efficiency gained by decreasing the number of data bases required and data integration problems that would be eliminated. At present, the Info System, Moneymax System, and the investment related activity in the Bureau's Finance System are all maintained by the investment group in Albuquerque. The built-in inefficiencies in the current Bureau operated investment program have resulted in numerous accountability problems, resulting in the need for

multiple reconciliations, and erroneous fund balances and investment portfolio listings.

By including the investment services in the contract, the Bureau staff can concentrate on directing the investment program and rely on the contractor to perform the accounting and custodial aspects of the investment program.

Also, this contract will place the trust funds in an institution which will be subject to annual independent audits by certified public accountants issuing opinion audits on the account systems maintained by the contract bank. This will be the very first time all the trust funds will be included in such an environment. These funds will now be subject to internal and external audits supplied by the contract bank, and to audits by the General Accounting Office and the Inspector General's Office as well as contract compliance reviews by the Treasury Department and the Bureau of Indian Affairs.

There are 205.02 man-years of effort by over 407 individual employees (full-time and part-time) across the Bureau of Indian Affairs performing cash management, investment, and trust fund accounting functions. It is anticipated that half of the man-years of effort will not be required as a direct result of the contract.

After an analysis of positions that are authorized and budgeted, but unfilled, across the Bureau, it appears that in most instances, employees adversely impacted as a result of this contract will be able to take other jobs in their present locations. The employees that cannot be placed in other positions will be impacted through reduction-in-force procedures. This will be done only as a last resort. The exact number of employees to be impacted has not been determined. This will be accomplished by an office-by-office analysis with careful evaluation of on-going workload requirements during the initial planning for contract implementation.

Until the contract is awarded, I cannot provide a cost figure. However, during the initial implementation year, the cost will be greater than in subsequent years because we plan to phase into the contract mode. There will be some dual costs for Bureau operations and contract operations during FY 1987. The Bureau will request additional funds either through a reprogramming within the operation of Indian programs, or through an offsetting recission from one of the Bureau's other appropriations. After the implementation year, we expect the contract cost plus any remaining Bureau residual operation costs will not exceed what we are currently paying for service delivery.

In summary, quicker investment of and better accounting for the Indian trust fund monies will result from this new approach. Modern accounting and telecommunication systems will make accurate information on trust fund activities available to BIA, tribes, and individual Indian participants much faster. High quality investment advice will help Bureau employees make the best possible investment decisions to maximize returns, and meet cash needs within statutory investment restraints. Any interest earned by trust fund monies will be credited to trust fund accounts. As is now the case, there would be no cost of the services borne by the tribes or individual Indians whose funds are involved. All concerned parties stand to gain from this new approach.

The contract will provide a giant step toward returning confidence in the Bureau's accountability and services to tribes and individual Indians and Alaska Natives. It is,as I mentioned before, a serious attempt to correct the operational deficiencies and provide the quality of service as would be expected of a prudent trustee.

I have, through letters, a Federal Register notification, a National NCAI meeting presentation, and individual meetings, consulted with tribal leaders and representatives and asked for their comments concerning this improvement action. There have been very few negative comments. In most cases, the tribes have offered positive encouragement and support the contract.

This concludes my prepared statement. I will be happy to answer any questions you may have.

PREPARED STATEMENT OF PAUL R. FERM

MR. CHAIRMAN, WE APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE TO SHARE OUR VIEWS ON THE MANAGEMENT OF INDIAN TRUST FUND MONIES. I WOULD LIKE TO BEGIN BY IDENTIFYING WHO WE ARE AND WHY WE ARE HERE TODAY. THE CITIZENS AND SOUTHERN CORPORATION IS A THREE-STATE REGIONAL BANK HOLDING COMPANY WITH ASSETS IN EXCESS OF $18 BILLION. IN ADDITION, WE HAVE A TRUST DEPARTMENT WHICH MANAGES ASSETS IN EXCESS OF $25 BILLION. OUR TRUST DEPARTMENT MANAGES FUNDS FOR CORPORATE AND GOVERNMENT CLIENTS. IN FACT, WE CURRENTLY HANDLE TRUST FUND ACCOUNTING FOR 1,500 SEPARATE GOVERNMENTAL CUSTOMERS WHICH INCLUDE FEDERAL, STATE AND LOCAL UNITS.

C&S NATIONAL BANK IS THE LEAD CONCENTRATOR BANK FOR THE UNITED STATES TREASURY CASH CONCENTRATION SYSTEM. IN THIS ROLE, C&S IS RESPONSIBLE FOR COLLECTION OF $140 BILLION IN ANNUAL COLLECTIONS FOR THE U.S. TREASURY. THIS REPRESENTS DEPOSITS MADE BY ALL FEDERAL AGENCIES NATIONWIDE INTO ANY COMMERCIAL BANK. CURRENTLY, WE MANAGE THE DEPOSITS FOR MORE THAN 3,000 AGENCY OFFICES DEPOSITED INTO 500 COMMERCIAL BANKS. WE ARE CHARGED WITH CONCENTRATING 100% OF THESE DEPOSITS DAILY, AS WELL AS CAPTURING ALL OF THE INDIVIDUAL ACCOUNTING INFORMATION ON EACH DEPOSIT. OUR

ORGANIZATION HAD THE OPPORTUNITY TO DEVELOP THIS AUTOMATED SYSTEM THREE YEARS AGO, WHICH WE CURRENTLY MANAGE ON A DAILY BASIS.

C&S IS ALSO ONE OF THE SIX U.S. TREASURY APPROVED LOCKBOX BANKS. IN FACT, C&S WAS THE FIRST APPROVED LOCKBOX BANK BY U.S. TREASURY IN 1982. A LOCKBOX BANK IS A COMMERCIAL BANK THAT ACCEPTS PAYMENTS TO FEDERAL AGENCIES ON THEIR BEHALF. WE PROCESS THE CHECKS IN A TIMELY FASHION TO ACCELERATE THE COLLECTION OF MONIES FOR A FEDERAL AGENCY. WE ACCELERATE COLLECTION OF FUNDS BY HAVING MULTIPLE PICK-UPS AT THE POST OFFICE THROUGHOUT THE DAY AND BY PROCESSING ON A CONTINUOUS BASIS. WITH RESPECT TO THE INDIVIDUAL AGENCY, NOT ONLY DO WE HANDLE THE CHECK COLLECTION, BUT WE ELECTRONICALLY CAPTURE ALL THE ACCOUNTING INFORMATION FOR EACH REMITTANCE. WE IN TURN TRANSMIT THE DATA FILE TO THE AGENCY ON A DAILY BASIS. THE DATA FLOW MUST MATCH THE MONEY FLOW AND BALANCE TO THE PENNY. ALL OF THIS IS DONE WITHIN 24 HOURS OF THE PAYMENT BEING RECEIVED IN THE POST OFFICE BOX OF THE AGENCY. AS ONE OF THE TREASURY APPROVED LOCKBOX BANKS, WE PROCESS PAYMENTS FOR A NUMBER OF FEDERAL AGENCIES INCLUDING INTERNAL REVENUE SERVICE, SOCIAL SECURITY ADMINISTRATION, THE JUSTICE DEPARTMENT, HOUSING AND URBAN DEVELOPMENT, VETERANS ADMINISTRATION AND NUMEROUS OTHERS.

I WOULD LIKE TO FOCUS OUR ATTENTION NOW ON THE BUREAU OF INDIAN AFFAIRS. THE SECRETARY OF INTERIOR, UNDER A 1938 LAW, IS AUTHORIZED TO INVEST INDIAN TRIBAL TRUST FUND MONIES. UNDER THAT LAW, THE SECRETARY OF INTERIOR IS CHARGED WITH RECEIPT OF THE MONIES AND INVESTMENT OF SAID FUNDS UNTIL SUCH TIME AS THE LAWFUL RECIPIENTS ARE AUTHORIZED TO RECEIVE MONEY UNDER THE PROVISIONS OF

THE TRUST. THE BIA STARTED A FORMAL INVESTMENT PROGRAM IN MID 1966. UNDER THIS PROGRAM, ALL TRUST MONIES WERE INVESTED ON A TIMELY BASIS. THE RESPONSIBILITY OF THE U.S. TREASURY DEPARTMENT IS TO ASSIST THE BUREAU OF INDIAN AFFAIRS IN COLLECTION OF MONIES FOR THE TRUST FUND. SECONDLY, THE TREASURY ASSISTS IN INVESTMENT OF THESE MONIES BY OFFERING AN OVERNIGHT INVESTMENT RATE TO THE BUREAU OF INDIAN AFFAIRS. U.S. TREASURY FURTHER ASSISTS BIA IN HANDLING DISBURSEMENTS FOR BIA. IT IS MY UNDERSTANDING THAT THE MAJORITY OF THESE DISBURSEMENTS ARE MADE ON AN AUTOMATED BASIS.

THE INDIAN TRUST FUNDS ARE NOT TYPICAL OF ORDINARY TRUST FUNDS IN SEVERAL ASPECTS, AND THEY REQUIRE AN INDEPTH UNDERSTANDING TO APPRECIATE THE TRUE SCOPE OF WORK INVOLVED. THE TRUST FUND CURRENTLY HAS A TOTAL ASSET SIZE APPROACHING $2 BILLION. THIS INCLUDES MORE THAN 250 SEPARATE TRIBAL AND 250,000 INDIVIDUAL INDIAN ACCOUNTS. AS THIS FUND GROWS, THE COMPLEXITY OF ACCOUNTING GROWS. THE DEPARTMENT OF INTERIOR HAS LIMITED RESOURCES WITH WHICH TO UPGRADE THE COLLECTION, INVESTMENT AND DISBURSEMENT ACCOUNTING FUNCTIONS WITH REGARD TO THIS TRUST FUND. AS A RESULT THERE IS DIFFICULTY IN BALANCING THE TRIBAL TRUST FUNDS ON A TIMELY BASIS AND RECONCILING WITH THE INDIVIDUAL TRUST FUND ACCOUNT. TRIBES, AS WELL AS INDIVIDUAL INDIANS, OFTEN CAN NOT GET A CURRENT BALANCE ON THEIR TRUST FUND ACCOUNT. CREDITS ARE SOMETIMES DELAYED. INTEREST ON DEPOSIT MONIES ARE CREDITED ONLY ONCE EACH SIX MONTHS.

THERE HAS BEEN CONSIDERABLE DISCUSSION OF THE NECESSITY FOR NEW LAWS WITH REGARD TO THE INDIAN TRUST FUND MANAGEMENT. THE BIA HAS A FIDUCIARY RESPONSIBILITY FOR THESE MONIES. THE INVESTMENT OPTIONS APPEAR TO SOME AS BEING LIMITED CURRENTLY. THE CURRENT INVESTMENT OPTIONS ARE U.S. TREASURY INSTRUMENTS, INCLUDING TREASURY BILLS, BONDS, ETC., AS WELL AS CERTIFICATES OF DEPOSIT OF BANKS OR SAVINGS AND LOANS WHICH HAVE APPROPRIATE INSURANCE COVERAGE ON THEM. IF A CERTIFICATE IS IN EXCESS OF THE INSURANCE COVERAGE, SECURITIES MUST BE PLACED BY THE ISSUING INSTITUTION TO ASSURE THAT BIA HAS A NO-RISK INVESTMENT IN THAT CERTIFICATE. MODIFICATION OF THE INVESTMENT OPTIONS IS CLEARLY SOMETHING THAT CAN BE ADDRESSED BY THIS COMMITTEE.

WE FEEL HOWEVER THAT A GREATER CONCERN NEEDS TO BE ADDRESSED WITH REGARD TO INDIAN TRUST FUND MONIES. THE ISSUE IS THE COMPLEX ACCOUNTING MANAGEMENT THAT IS NECESSARY FOR MANAGING THE TRUST FUND MONIES. WITH A COMPLEX PORTFOLIO OF 250 TRIBES AND 250,000 INDIVIDUAL ACCOUNTS REQUIRING DAILY AND MONTHLY RECONCILEMENT, THE MAGNITUDE OF THE ACCOUNTING REQUIRED IS GREAT. LAWS GOVERNING MANAGEMENT OF INDIAN TRUST FUND MONEY DO NOT REQUIRE CHANGE IN ORDER TO STREAMLINE THE FUND ACCOUNTING PROCEDURES.

THE PURPOSE IN HAVING C&S BANK PRESENT THIS MORNING IS THAT C&S IS ONE OF THE BANKS WHICH HAS SUBMITTED A PROPOSAL TO THE BUREAU OF INDIAN AFFAIRS AND THE U.S. TREASURY TO MANAGE THE INDIAN TRUST

FUND MONIES. UNDER THE PROPOSED SYSTEM, THE BANK WOULD BE RESPONSIBLE FOR RECEIPT OF FUNDS INTO THE TRUST FUND AS COORDINATED BY THE SIX BANK TREASURY LOCKBOX NETWORK. THE FUNDS WOULD BE ORIGINALLY COLLECTED BY ONE OF SIX TREASURY LOCKBOX BANKS. C&S BANK WOULD THEN CONCENTRATE THE INDIAN COLLECTIONS FROM LOCKBOX BANKS ON A DAILY BASIS AND MERGE THEM WITH THE MONIES BEING ELECTRONICALLY RECEIVED FROM FEDERAL AGENCIES AND OTHER SOURCES. C&S WOULD THEN PLACE THE TRUST FUND MONIES IN THE INVESTMENTS THAT ARE AUTHORIZED BY CURRENT FEDERAL LAW. FURTHERMORE, INVESTMENTS WOULD BE MADE UNDER THE GUIDANCE AND APPROVAL OF THE BUREAU OF INDIAN AFFAIRS. IF THE INVESTMENT OPTIONS ARE CHANGED BY LAW, AS THE TRUST FUND MANAGER C&S BANK WOULD INVEST IN THE AUTHORIZED INVESTMENTS. THE KEY INGREDIENT TO THE MANAGEMENT OF THE INDIAN TRUST FUND MONIES IS THE ACCOUNTING MANAGEMENT THAT IS NECESSARY. IT IS IMPERATIVE THAT ALL DEPOSITS MADE TO THE TRUST FUND BE ALLOCATED TO THE CORRECT TRIBAL TRUST FUND OR THE INDIVIDUAL INDIAN ACCOUNT ON A DAILY BASIS. FURTHERMORE, IT IS NECESSARY THAT MONTHLY STATEMENTS BE AVAILABLE FOR EACH PARTICIPANT IN THE TRUST FUND. IN FACT, ON THE LARGER TRUST FUND ACCOUNTS, WHICH WOULD BE THE TRIBAL TRUST FUND MONIES, IT IS IMPERATIVE THAT A DAILY STATEMENT BE PRODUCED AS IS DEEMED NECESSARY BY BIA.

THE DISBURSEMENT OF FUNDS IS ALSO A PROPOSED RESPONSIBILITY ASSOCIATED WITH THE INDIAN TRUST FUND MANAGEMENT. C&S BANK WOULD ASSURE THAT DISBURSEMENTS ARE MADE IN THE APPROPRIATE MODE, EITHER ELECTRONICALLY OR BY CHECK, AT THE TIME THAT THEY ARE DUE. THE FUNDS WOULD BE DISBURSED TO THE DESIGNATED ADDRESS AND LOCATION AS IDENTIFIED BY THE BUREAU OF INDIAN AFFAIRS.

A PRIMARY OBJECTIVE OF THE TRUST FUND MANAGEMENT SYSTEM IS THE PROVISION OF TIMELY INFORMATION TO THE BIA AS WELL AS TO INDIVIDUAL TRIBES AND INDIANS. THIS ACCOUNTING SYSTEM WILL ASSIST THESE GROUPS IN RESOLVING INQUIRIES REGARDING TRUST FUND MONIES. THE INVESTMENT OF FUNDS TO YIELD THE HIGHEST POSSIBLE RETURN IS A MATCHING KEY INGREDIENT FOR TRUST FUND MANAGEMENT.

IN CONCLUSION, I WOULD REITERATE THAT LAW CHANGES FOR INVESTMENT ALTERNATIVES ARE NOT CRITICAL TO THE TIMELY MANAGEMENT OF INDIAN TRIBAL TRUST MONIES. ALTERNATIVE INVESTMENT OPTIONS AUTHORIZED BY LAW CHANGES COULD INCREASE THE INVESTMENT YIELD ON THE TRUST FUND MONIES. WHEN EXAMINING MODIFICATION OF INVESTMENT OPTIONS, HOWEVER, SECURITY OF THE PRINCIPLE AMOUNT IN THE TRUST FUND MUST BE THE PRIMARY CONSIDERATION, AS BIA HAS FIDUCIARY RESPONSIBILITY IN MANAGING THESE FUNDS.

IMPLEMENTATION OF A LOCKBOX COLLECTION SYSTEM FOR BIA COULD GENERATE $500,000 TO $1,000,000 PER YEAR IN ADDITIONAL REVENUE TO THE TRUST FUND, USING INVESTMENTS CURRENTLY AUTHORIZED. ONCE AGAIN, C&S FEELS A PRIMARY CONSIDERATION IN REVIEWING TRIBAL TRUST FUNDS SHOULD BE THE NEED TO IMPLEMENT AN ACCOUNTING SYSTEM TO MANAGE THESE MONIES SO THAT BIA CAN REPORT ON A TIMELY BASIS TO PARTICIPANTS IN THE TRUST FUNDS.

THANK YOU FOR GIVING CITIZENS AND SOUTHERN BANK THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

PREPARED STATEMENT OF ELOUISE COBELL

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before your Committee on the proposed private management of Indian trust funds--an issue of most direct importance to Indian tribes. As Vice President of the Native American Finance Officers Association (NAFOA), I am pleased to offer our comments on this recent federal proposal. Our suggestions offered will be limited to the tribal financial planning functions of the investment aspects of the proposal.

Our organization was founded in 1982 and is comprised of finance officers, treasurers and comptrollers representing over 50 tribal governments. We are a professional group dedicated to the improvement of the quality of financial management of tribal governments and the promotion of their fiscal integrity. To meet these objectives, our activities include a tribal finance network which (a) conveys financial information among our tribal constituency and between external government agencies, (b) provides training and professional assistance to tribal organizations and (c) recommends appropriate actions to be taken by and standards for tribes and government agencies with respect to their financial systems.

Today's oversight topic is both timely and of direct interest to our officers who work on a daily basis with their respective federal counterparts in the management of trust monies.

The recent federal proposal to contract private management would include state-of-the-art improvements to the Bureau of Indian Affairs accounting, cash management and investment management systems.

It is the investment management aspects of the contracting activity which we focus on today. Among other operational improvements, the investment proposal would introduce professional portfolio management which would allow tribes to select various investment maturities and portfolio options consistent with their respective investment objectives and liquidity needs.

In order to enhance this function, the procurement request places the responsibility with BIA to increase the interaction between tribes and the contractor in developing investment strategies and reviewing investment performance. To do so would require (a) an efficient investment coordination system between BIA and tribes and (b) assistance to tribes in adapting and improving their own financial management planning systems.

The proposed procurement, however, states this as a longer term objective. Thus provision for tribal financial planning and investment assistance was not included in the current contract request.

Based on the views expressed at our recent annual meeting, we believe that a parallel effort should be made to enhance tribal interaction from the outset, so that our officers can begin to plan and participate in any new investment of their tribes' assets.

While we are developing recommendations on alternative approaches to this effort, we offer the following suggestions for federal consideration at this time:

- Tribal consultation, briefing and training sessions are necessary on any new operational requirements resulting from private sector management.

- Assistance to tribes in defining and establishing custom-tailored investment objectives should be made available.

- Assistance to tribes in selecting any new investment portfolio options resulting from private management should also be available.

- Development of effective tribal budgeting, forecasting and financial planning systems is a threshold. Information resulting from these functions is fundamentally necessary so that investment managers may develop and recommend the best portfolio options for tribal investment.

- Improvements to BIA's current investment coordinator system are necessary so its investment directions to any future contracting manager will reflect tribal investment preferences and cash requirements.

We believe NAFOA'S network could provide an essential link in the proposed investment management services of Indian trust funds. The above areas of suggested improvements offer a potential role for our participation.

I hope these comments are helpful to your Committee. This concludes my statement and I would now be pleased to respond to any questions you may have.

AMERICAN INDIAN NATIONAL BANK

PREPARED STATEMENT OF ALAN P. PARKER

BEFORE THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

SEPTEMBER 23, 1986

OVERSIGHT HEARINGS ON MANAGEMENT OF INDIAN TRUST FUNDS

Mr. Chairman and members of the Committee, on behalf of the American Indian National Bank I would like to express my appreciation for the invitation to present testimony this morning. We at the American Indian National Bank have followed closely developments regarding the administration of the approximately $1.7 million in Indian trust funds over the past several years. As this Committee is aware, the GAO has identified management problems on the part of the Bureau of Indian Affairs (BIA) in the past and a comprehensive evaluation of the issue was completed by the Price-Water House Accounting firm in 1983. In April of this year the BIA and the Department of Treasury jointly issued a Request for Proposal (RFP) with the objective of contracting the management of the funds out to the private sector.

I would like to offer the comment at the outset that in our opinion the RFP is responsive to the Price-Water House Report recommendations and if implemented would correct the management deficiencies identified by GAO and

other agencies. Any one of the concentration banks who have submitted bids would have the capability of instituting a collection, accounting, investment management and funds distribution system at the level of efficiency which the beneficial owners of the funds deserve. The technological advances in cash management employed in the private sector far exceeds the capability of the BIA. I would emphasize that this is not necessarily a criticism of the BIA since Government agencies are not designed to achieve the level of efficiency which is inspired by the competition of the market place.

I am pleased to join Ms. Elouise Cobell, representing the National American Indian Finance Officers Association (NAIFOA) in pointing out that there is a tremendous opportunity to also improve the understanding and capability of tribal finance officers in the process of implementing this RFP. It is our experience at the Bank that for the most part, tribal finance officers are responsible and capable individuals who are doing their best with the limited tools available to them. The cash management and investment management services now provided by the BIA are not really capable of meeting the needs of the tribes in terms of current information and available options. When the contract is awarded it would be important to establish direct communication between the contractor and tribal finance officers in order to provide the contractor with first hand information as to the needs of their client and the finance officer with a thorough understanding of the procedures and services of the contractor. It is acknowledged that the Trustee function of the BIA must be preserved but this can be accomplished without disturbing a direct relationship between the provider of services (i.e. contractor) and the client (i.e. tribal finance officers.)

I understand that the National American Indian Finance officers Association has pointed out to BIA officials that the procedures described in the RFP would delay unnecessarily the establishment of a direct relationship. The logical approach would be to organize the training and orientation program for all tribal finance officers in order to institute the change from BIA to contracted management most efficiently.

I understand there has been quite a bit of attention paid to the investment management functions described in the RFP. It is our understanding that the concentration bank receiving the contract would be experienced to establish a number of pools of funds as part of the investment management services. The most simple and direct approach would be to create a short-term liquidity fund, an intermediate fund (30 - 90 days) and a long-term fund. In the future it would seem appropriate to consider expanding the investment management options according to the investment objectives identified by tribal finance offices. I would hope this Committee would have the opportunity to focus its attention in this area with the objective of providing more flexibility in the statutory provision for Indian trust fund management. The pertinent provision is 25 USC 162(a) which has not been amended for more than 20 years. If the flexibility can be provided this would allow for a wider range of investment options and opportunities for capital appreciation and possibly leveraging.

In closing, I would like to thank the Committee again for the opportunity of presenting testimony and shall be pleased to answer any questions you may have.

PREPARED STATEMENT OF REBECCA ADAMSON

On behalf of First Nations Financial Project, (FNFP), I want to express our appreciation for this opportunity to testify at these hearings.

First Nations Financial Project seeks to provide technical assistance in the areas of finance, business, marketing, and development strategies upon request from Tribes. It is our intention that the technical assistance which we provide will decrease a tribes economic dependency upon outside benefactors, be they federal, industrial, or private, thereby moving a tribe toward economic self-sufficiency.

Our interest is with the Tribes, and seeing that the Tribal Trust Funds start being recognised as the Tribes'. Essentially we support the recommendations as set forth in the Price-Waterhouse Study and acknowledge the strides the Bureau of Indian Affairs has made in implementing some of the recommendations.

But we would like to emphasize that the most fundamental question is: How can the Tribes' economy begin to derive direct benefit from their trust dollars while the Trust, a reasonable return, and the principal remain quaranteed?

Even though the tribes are the beneficiaries of the trust money, the only effective control they exercise over their trust funds is the decision to leave their funds in trust or to take them out of trust.

A Trustee in any system has a duty to take into account, when investing and managing a Trust, the needs of the beneficiaries. Under any other standard, according to Scott's Law of Trust, G. Bogert's, The Law of Trust and Trustee, or by simply applying common law practice, a Trustee's standards and criteria for sound Trust management are set in order to maximize use of the proceeds in light of the needs of the beneficiary.

The $1.6 billion in Trust Funds if deployed properly, could be of tremendous benefit in maximizing and impacting the Tribes long and short range socio/economic needs. In addition, these awards can be used as leveraging tools when placed with local financial institutions. Tribes, directing the deposits of their trust funds, could take advantage of potential leveraging benefits, for example lower interest rates and obtaining credit and debt services for tribal members.

However, the Department of the Interior tends to favor per capita payments of trust fund awards. In these per capita payments, it is typical for 80% of an award to be distributed to tribal individuals. This seems to be a radical departure from the fiduciary role performed by other Trustees. For example, the very existence of many universities, foundations, and religious organizations is based upon the preservation, not the dissipation, of the funds in trust.

Most trust managers would vehemently oppose dividing the tangible assets and distributing the corpus. The trustees managing the endowment funds for the University of Georgetown would never consider proper fund management to be the division and disbursement of all property, holdings and other tangible assets to the individuals in the class of 1986. It must be asked, why has the Department of the Interior condoned the distribution of millions of dollars of tribal trust funds via per capita payments?

We often hear the argument that tribes want per capita payments. But then we must ask if Interior, as the Trustee, has ever presented other options to the tribes? Congressional hearing records point out that per capita distribution is the one option presented to the tribes over and over. There is no documentation to support claims that investment and tribal progamming options are encouraged or discussed by Interior representatives when they assist tribes in developing the trust fund use plans called for in the Indian Judgement Funds Distribution Act.

The primary reason tribes are not realizing tremendous benefit from their money at this point in time, is due solely to the perverted process by which the Trustee manages the Fund. What we should be seeing is a very close working relationship between the trustee and the beneficiary.

Instead the record shows no effort has been made by the BIA to obtain and secure tribal input. For example, we surveyed 25% of the tribes with Trust Fund Accounts and approximately 1% had heard of the Price Waterhouse Report, or knew who their Area Investment Coordinator was, or were aware of the RFP that had been released for Trust Fund Management.

Interior did send a notice to the Tribes informing them about the RFP but this was after the process was already in place. This in not what we would call Trustee/Beneficiary consultation. All in all, the over 70 page RFP does little to recognize the tribe's beneficiary rights.

Mr. Chairman, the Trustee is operating in a vacuum which is reminiscent of the late fifties and early sixties when at that time Tribes were held as incompetent and incapable of controlling the schools and educational process for their children's future.

In order for tribes to exercise contol over, and derive benefit from their trust funds the Department of the Interior must begin to fulfill their statutory obligations under the Indian Judgement Funds Distribution Act, P.L. 93-134. Section 3(b) Clause 1 requires that, "In preparing a plan for the use or distribution of the funds of each Indian judgement, the Secretary shall, among other things, be assured that -- (1) legal, financial, and other expertise of the Department of the Interior has been made fully available in an advisory capacity to the Indian Tribe which is entitled to such funds, to assist it to develop and communicate to the Secretary...its own suggested plan for the distribution and use of such funds."

Clause 5 under Section 3(b) requires that the Secretary "in the development of the use and distribution plans, survey past and present economic development plans of the tribe, evaluate long-range benefits that might accrue to the tribe from retention of judgement funds for tribal program purposes, and actively encourage programming of such funds for such economic development purposes.

The BIA division responsible for preparing the distribution plans does not have adequate staff with economic, planning or business backgrounds to properly assist tribes in the development of economic/investment oriented distribution plans. Distribution plans submitted to Congress "are generally devoid of any indication that Interior personnel have in any way recommended, advocated or even raised questions at tribal meetings, which would encourage utilization of judgement funds for program purposes." (Senate Report Number 97-658).

In other words, if a tribe is to convince its members that investment, rather than per capita distribution, is the way to go, they have to do it themselves. Investment/economic oriented distribution plans which have been developed and forwarded to Congress are solely to the credit of the respective tribes.

The Saginaw Tribe of Michigan is such a tribe. The Saginaws were able to move special legislation, the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgement Funds Act", through Congress. The legislation, which was signed into law on June 30, 1986, provides that 100% of the funds awarded to the tribe in Dockets 59, 13E and 13F, would be made available to the tribe for tribally determined investments and economic development.

From FNFP's perspective, this legislation serves as an important national model for other tribes to follow as they seek to gain more control over their economic future via utilization of trust funds. FNFP has been working with the Saginaw Tribe to assist them in the development of an investment plan that meets the social and economic needs of the tribe.

The development of the Tribe's investment plan has had several different stages. Initially, FNFP was involved with the conduct of a tribal community workshop on the advantages of investing the Saginaw settlement award as opposed to distributing the amount on a per capita basis.

Over the past year, FNFP has been working with the Saginaw Tribal Council and key tribal staff in preparing them for the selection of a financial advisor. In conjuction with this effort, FNFP is working with the tribal council to develop policy regarding the effective use of the Tribe's investment earnings and a formula for distributing these earnings among the Tribe's existing programs.

Toward both of these ends, FNFP has conducted a series of meetings/workshops with the tribal council and program staff. These workshops have provided technical assistance in the areas of finance, business, and development strategies.

We have enumerated the aforementioned activities for the purpose of bringing to light what it means to provide the necessary expertise, consult with, and assist in the development of tribal investment/program objectives with regard to trust funds. This type of technical assistance should be made available to every tribe due to receive trust monies, or that has trust monies invested by the BIA Branch of Investment, or is investing its trust money independently. This assistance should be provided by the BIA and/or private sector sources, possibly by way of contracting under P.L.93-638.

We ask that the necessary steps be taken to assure that a process will be set in place which upholds the Tribes' right to contol and derive economic benefit from their trust monies.

PREPARED STATEMENT OF ERNEST S. ROBSON III

MR. CHAIRMAN:

WE APPRECIATE THE OPPORTUNITY TO PARTICIPATE IN YOUR HEARING ON THE DEPARTMENT OF THE INTERIOR'S BUREAU OF INDIAN AFFAIRS "REQUEST FOR PROPOSAL (RFP) FOR FINANCIAL MANAGEMENT SERVICES FOR THE BUREAU OF INDIAN AFFAIRS." WE AGREE WITH THE BASIC CONCEPT OF THE RFP, BUT BELIEVE IT SHOULD BE EXPANDED TO INCLUDE AN ADDITIONAL SAFEGUARD - A POLICY AUDIT.

THE PURPOSE OF THE RFP IS TO CONTRACT WITH THE PRIVATE SECTOR TO OBTAIN SELECT FINANCIAL SERVICES REGARDING THE MANAGEMENT OF TRUST FUNDS ADMINISTERED BY THE BUREAU OF INDIAN AFFAIRS.

MULTINATIONAL BUSINESS SERVICES HAS NOT SUBMITTED A PROPOSAL IN RESPONSE TO THE RFP. ALTHOUGH OUR FIRM DOES NOT BID ON FEDERAL CONTRACTS, WE HAVE BEEN INVOLVED IN A NUMBER OF "CONTRACTING-OUT" AND "PRIVATIZATION" ACTIVITIES. IN THIS REGARD, WE HAVE WORKED AS INVESTMENT BANKERS AND ALSO AS CONSULTANTS TO INDUSTRIAL COMPANIES.

THE PRINCIPALS OF OUR FIRM INCLUDE BOTH A FORMER POLICY OFFICIAL OF THE OFFICE OF MANAGEMENT AND BUDGET AND A FORMER HEAD OF A PRIVATE INVESTMENT BANKING FIRM WHICH INCLUDED A GOVERNMENT SECURITIES DEALERSHIP.

WE AGREE WITH THE CONCEPT OF CONTRACTING WITH THE PRIVATE SECTOR FOR FINANCIAL MANAGEMENT SERVICES FOR THE INDIAN TRUST FUNDS, AND BELIEVE THE RESULT CAN BENEFIT ALL PARTIES: THE INDIAN TRIBES, THE U.S. GOVERNMENT AND TAXPAYERS, AS WELL AS THE PRIVATE SECTOR.

THE INDIAN TRIBES AND INDIVIDUALS CAN BENEFIT FROM IMPROVED FINANCIAL MANAGEMENT OF THEIR TRUST FUNDS. THE PROPOSED IMPROVEMENTS IN FINANCIAL PLANNING, CASH MANAGEMENT AND INVESTMENT MANAGEMENT SHOULD INCREASE THE VALUE OF THE TRUST FUNDS, IN ADDITION TO PROVIDING THE INDIAN TRIBES AND INDIVIDUALS WITH GREATER ABILITY TO CONTROL THEIR FINANCIAL AFFAIRS.

THE FEDERAL GOVERNMENT AND TAXPAYERS WILL BENEFIT BY NOT HAVING TO PROVIDE SERVICES WHICH ARE MORE SUITABLY PROVIDED BY THE PRIVATE SECTOR. THE TREASURY DEPARTMENT, FOR EXAMPLE, MUST MANAGE THE FINANCIAL AFFAIRS OF THE UNITED STATES. THIS INVOLVES DECISIONS OVER HUNDREDS OF BILLIONS OF DOLLARS. GIVEN THIS OVERWHELMING TASK, IT IS DIFFICULT FOR THE TREASURY DEPARTMENT TO FOCUS ON THE COLLECTION AND CASH MANAGEMENT OF THE INDIAN TRUST FUNDS WITH THE SAME LEVEL OF DETAIL THE PRIVATE SECTOR CAN PROVIDE. IN ADDITION, PRIVATIZING

THESE SERVICES CAN SAVE THE U.S. TAXPAYERS MONEY, WHICH IN THESE TIMES OF RESTRAINED BUDGETS AND TAX REFORM IS ESPECIALLY NECESSARY.

FINALLY, IN PROVIDING FINANCIAL MANAGEMENT SERVICES WITH WHICH IT HAS LONG-STANDING EXPERIENCE AND EXPERTISE, THE PRIVATE SECTOR WILL BENEFIT.

THE BANKING COMMUNITY, IN CONCERT WITH BIA EXPERTS, IS EXTREMELY WELL QUALIFIED TO MANAGE THE BIA INVESTMENT PORTFOLIO. THE FINANCIAL REPORTS AND AUDITS DESCRIBED IN THE RFP WILL PROVIDE A BASIS FOR MONITORING THE INTEGRITY OF THIS FINANCIAL SYSTEM.

MOST PRIVATIZATION EFFORTS, HOWEVER, REQUIRE AN EXTRA ADDED ELEMENT OF COMMUNICATION AND TRUST, ONE THAT IS NOT USUALLY PROVIDED FOR IN MOST CONTRACTS. EACH PARTICIPANT -- THE GOVERNMENT, THE INDIAN TRIBES, AND THE PRIVATE SECTOR -- WILL BE OPERATING UNDER DIFFERENT SETS OF RULES AND RESTRAINTS THAN EACH NORMALLY FACES. BASED UPON OUR EXPERIENCE, WE BELIEVE THAT THE RFP SHOULD BE AMENDED TO INCLUDE ONE KEY ELEMENT ESSENTIAL TO MOST SUCCESSFUL CONTRACTING-OUT EFFORTS — NAMELY, A POLICY AUDIT.

THE ADDITION OF A POLICY AUDIT IS ESSENTIAL TO ENSURE THE SUCCESS OF THE BIA'S PRIVATIZATION EFFORT. SUCH AN AUDIT WOULD REVIEW THE CONTRACTOR'S INVESTMENT DECISIONS WITH RESPECT TO BIA ENABLING STATUTES, ADMINISTRATION POLICY, AND THE OPERATING AND REPORTING PROCEDURES OF THE FEDERAL FINANCIAL ESTABLISHMENT, PARTICULARLY THE GENERAL ACCOUNTING OFFICE, TREASURY DEPARTMENT, OMB,

AND THE CONGRESS. THIS AUDIT SHOULD BE PERFORMED BY A GROUP WITH A WORKING KNOWLEDGE OF BOTH THE GOVERNMENT SECURITIES MARKET AND THE FEDERAL FINANCIAL ESTABLISHMENT. FINANCIAL AUDITS, AS DESCRIBED IN THE REQUEST FOR PROPOSAL, WILL NOT ADDRESS THESE CONCERNS.

MANY GOVERNMENT OFFICIALS DO NOT APPRECIATE THAT INVESTMENT IN GOVERNMENT SECURITIES, EVEN UNDER THE GUIDELINES SET OUT BY THE BIA'S REQUEST FOR PROPOSAL, ENTAILS SIGNIFICANT ELEMENTS OF FINANCIAL RISK. THE VALUE OF LONGER TERM GOVERNMENT SECURITIES CAN FLUCTUATE DRAMATICALLY WITH CHANGES IN INTEREST RATES. IF THIS RISK IS NOT PROPERLY HEDGED, THE ASSET VALUE OF THE INDIAN TRUST FUNDS COULD BE SIGNIFICANTLY REDUCED. AND ANYONE WHO BELIEVES THAT "REPURCHASE AGREEMENTS" WITH FINANCIAL INSTITUTIONS ARE ALWAYS COMPLETELY SAFE SHOULD ASK THE CHASE MANHATTAN BANK ABOUT ITS EXPENSIVE EXPERIENCES WITH A FIRM CALLED DRYSDALE SECURITIES.

ON THE OTHER HAND, WE HAVE FOUND THAT MOST PRIVATE SECTOR INSTITUTIONS DO NOT UNDERSTAND THE MORE COMPLEX REVIEW AND APPROVAL PROCESSES TYPICAL OF THE FEDERAL GOVERNMENT. MOST BANK TRUST DEPARTMENT OFFICERS PROBABLY HAVE NOT EVEN HEARD OF THE GAO, OR THE OMB, MUCH LESS APPRECIATE THE CRITICAL ROLE THESE INSTITUTIONS COULD PLAY IN JUDGING THE SUCCESS OR FAILURE OF THEIR CONTRACT PERFORMANCE.

THE RESULTS OF PERIODIC POLICY AUDITS, PAID FOR BY THE CONTRACTOR, AND MADE AVAILABLE TO THE CONTRACTOR, THE CONGRESS, THE RELEVANT FEDERAL AGENCIES, AND THE INDIAN TRIBES, WILL PROVIDE THE BRIDGE NECESSARY TO INTEGRATE THE EFFICIENCIES OF THE PRIVATE SECTOR WITH THE SOCIAL RESPONSIBILITIES OF THE PUBLIC SECTOR.

IN SUMMARY, MR. CHAIRMAN, THE TREASURY DEPARTMENT AND THE BUREAU OF INDIAN AFFAIRS SHOULD MOVE FORWARD ON THIS CONTRACT. IT IS OUR PROFESSIONAL OPINION THAT THE CONTRACT SHOULD ALSO INCLUDE A REQUIREMENT THAT PERIODIC POLICY AUDITS BE PERFORMED BY A PRIVATE SECTOR FIRM INDEPENDENT OF THE CONTRACTOR AWARDED THE RFP.

THANK YOU, MR. CHAIRMAN, MEMBERS OF THE COMMITTEE.